

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

United States of America,

Plaintiff,

vs. Criminal Action Nos. 3:21-cr-49-1,2

Jonathan Toebbe,

Diana Toebbe,

Defendants.

Proceedings had in the Sentencing Hearings in the  
above-styled action on November 9, 2022, before the Honorable  
Gina M. Groh, United States District Judge, at Martinsburg,  
West Virginia.

APPEARANCES

On behalf of the United States of America:

Jarod J. Douglas  
Assistant United States Attorney  
United States Attorney's Office  
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The defendants were present in person.

Proceedings reported by means of stenotype; transcript produced  
by official court reporter.

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APPEARANCES (Continued)

On behalf of the United States of America:

S. Derek Shugert, Esq.  
United States Department of Justice  
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On behalf of the defendant, Jonathan Toebbe:

Nicholas Compton  
Assistant Federal Public Defender  
Federal Public Defender's Office  
651 Foxcroft, Ste. 202  
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On behalf of the defendant, Diana Toebbe:

Barry Beck, Esq.  
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308 West Burke Street  
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Jessica Carmichael, Esq.  
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Probation Officer Michael C. DeHaven was present.

## P R O C E E D I N G S

(November 9, 2022, at 11:09 A.M.)

- - -

THE COURT: Please be seated, everyone. We will call our cases.

THE CLERK: This is the case of the United States of America versus Jonathan Toebbe and Diana Toebbe, Criminal Numbers 3:21-cr-49, defendants 1 and 2.

The government is represented by counsel, Jarod Douglas, Jessica Smolar, and Derek Shugert. The defendants are present in person and by counsel Nicholas Compton for Mr. Toebbe, Barry Beck and Jessica Carmichael for Mrs. Toebbe.

Are the parties ready to proceed?

MR. DOUGLAS: The United States is ready, Your Honor.

MR. COMPTON: Jonathan Toebbe is ready, Your Honor.

MR. BECK: Good morning, Your Honor. Mrs. Toebbe is ready.

THE COURT: Good morning. All right, counsel, I'm going to go ahead and get the defendants under oath. We'll start with Mrs. Toebbe.

If you'll stand and raise your right hand, please, ma'am, we're going to get you under oath to answer any questions I may have for you today.

(The defendant, Diana Toebbe, was sworn in.)

DEFENDANT DIANA TOEBBE: I do.

1 THE CLERK: Thank you.

2 THE COURT: Ms. Toebe, I'll remind you now you're  
3 under oath, and if you make any untruthful statements or  
4 answers during today's proceeding, those untruthful statements  
5 or answers could form the basis for a separate action for  
6 perjury or false swearing. That having been said, feel free to  
7 ask questions. If you don't hear something, ask for it to be  
8 repeated. If you don't understand something, ask for an  
9 explanation. And at all times, feel free to consult with your  
10 lawyers. Fair enough?

11 DEFENDANT DIANA TOEBBE: Yes, ma'am.

12 THE COURT: All right.

13 Mr. Toebe, if you will please stand. We're going to  
14 administer the same oath.

15 THE CLERK: If you'll raise your right hand, sir.

16 (The defendant, Jonathan Toebe, was sworn in.)

17 DEFENDANT JONATHAN TOEBBE: I do.

18 THE CLERK: Thank you.

19 THE COURT: Mr. Toebe, the same thing for you.

20 You're under oath now. If you make any untruthful statements  
21 or answers during today's proceeding, those untruthful  
22 statements or answers could form the basis for a separate  
23 action for perjury or false swearing. That having been said,  
24 feel free to ask questions. If you don't hear something, ask  
25 for it to be repeated. If you don't understand something, ask

1 for an explanation. And at all times, feel free to consult  
2 with your lawyer. Fair enough?

3 DEFENDANT JONATHAN TOEBBE: I understand. Thank you,  
4 Your Honor.

5 THE COURT: You're welcome.

6 Before we get started, Mr. Douglas and Mr. Compton and  
7 Mr. Beck, in looking at the money that was recovered in this  
8 case, it appears as though \$54,300 of the 100,000 was  
9 recovered, that earnest money, but there's still \$45,700  
10 unaccounted for. Is that the amount?

11 MR. DOUGLAS: That is the correct figure, Your Honor.

12 THE COURT: All right. Where did the rest of the  
13 money go?

14 MR. DOUGLAS: The rest of the money is accounted for  
15 Your Honor, in Mr. Toebbe's report that he spent a certain  
16 amount of it.

17 THE COURT: Uh-huh.

18 MR. DOUGLAS: Okay. And then in addition to that,  
19 the fluctuation of the value of the Monero cryptocurrency  
20 which, according to the FBI -- and they kind of have a little  
21 more of an expertise in that than I do -- it matched to the  
22 fluctuation that had occurred during that passage of time  
23 before we were able to get access to it.

24 THE COURT: And that's your understanding,  
25 Mr. Compton and Mr. Beck, as well?

1 MR. COMPTON: Yes, Your Honor.

2 MR. BECK: Agreed, Your Honor. That's our  
3 understanding.

4 THE COURT: And I know I had a question that I think  
5 probation had gotten with you on, Mr. Douglas, about  
6 restitution. If that could be ordered in restitution. The  
7 remaining amount that was unrecovered. But apparently,  
8 according to the section under which the plea has been made,  
9 unless restitution is specifically in the plea agreement, then  
10 the Court can't order restitution?

11 MR. DOUGLAS: Yes, Your Honor. So my understanding  
12 of the restitution law is that either it's mandatory  
13 restitution, and there's enumerated offenses that doesn't  
14 include this offense --

15 THE COURT: Right.

16 MR. DOUGLAS: -- or if it's discretionary, then the  
17 parties still need to agree to it in the plea agreement under  
18 3663(a)(3) which the plea agreement is silent on that issue.

19 THE COURT: Okay. We're going to take a quick break  
20 real quick and get back out here on the record, and then we'll  
21 get started. What I plan to do -- I don't know whether our  
22 courtroom deputy let you all know or not -- is we'll start with  
23 Mrs. Toebbe, and then we'll move on to Mr. Toebbe's sentencing.  
24 I will let you know that I'm inclined to take these pleas  
25 today.

1 (Recess 11:24 A.M. - 11:31 A.M.)

2 THE COURT: Please be seated, everyone.

3 All right. We'll proceed with Ms. Toebbe's matter first.  
4 Has defense counsel received the presentence investigation  
5 report?

6 MR. BECK: We have, Your Honor.

7 THE COURT: And have you, Ms. Toebbe, received that  
8 report and reviewed it to your satisfaction with your lawyer?

9 DEFENDANT DIANA TOEBBE: Yes, ma'am.

10 THE COURT: The government has received and reviewed  
11 it of course?

12 MR. DOUGLAS: Yes, Your Honor.

13 THE COURT: And referring to the latest versions;  
14 correct?

15 MR. DOUGLAS: Yes, Your Honor.

16 THE COURT: All right. We do have some objections to  
17 the report so let's go ahead and take care of those now.

18 Mr. Beck, I'm looking through these. Objection No. 1 to  
19 what's now page 23, paragraph 154. That report has been  
20 revised so are you satisfied with that?

21 MR. BECK: We are, Your Honor.

22 May I use the podium, Your Honor?

23 THE COURT: Absolutely.

24 MR. BECK: Thank you, Your Honor.

25 Yes. That objection has been resolved, Your Honor.

1           THE COURT: Okay. And then Objection No. 2, is that  
2 just a holdover from the last time we were here before the  
3 Court on the Court's consideration of the original plea  
4 agreement? Because it refers to a downward variance, but we've  
5 got a binding in Ms. Toebbe's case to the low end of the  
6 guideline range.

7           MR. BECK: It is -- well, not more than the low end,  
8 Your Honor.

9           THE COURT: Right.

10          MR. BECK: Yeah, I suppose it is a holdover to the  
11 extent that we're still requesting that the Court go below the  
12 guidelines. Not --

13          THE COURT: Okay. So let's put it this way. Because  
14 you filed the new motion for a variant sentence below the low  
15 end of the guideline range, this really dovetails into that so  
16 the objection is no longer before the Court because I -- you  
17 know I'm going to consider your motion for variant sentence?

18          MR. BECK: I'm sorry, Your Honor?

19          THE COURT: This objection is no longer technically  
20 before the Court because you know I'm going to consider your  
21 motion for variant sentence which is the same thing?

22          MR. BECK: Correct.

23          THE COURT: Okay. So we can say it's withdrawn  
24 because I'm considering your motion?

25          MR. BECK: That's correct, Your Honor.



1           THE COURT: Okay. I do have a question on if I  
2 rejected the plea because it was woefully insufficient the last  
3 time around on round one, why Ms. Toebbe believes that I would  
4 consider a three-year sentence at this point?

5           MR. BECK: Well, Your Honor, I hope that --

6           THE COURT: And I'll -- you can further explore that  
7 later when we get to the dispositional phase --

8           MR. BECK: Right.

9           THE COURT: -- but I am curious.

10          MR. BECK: Well, Your Honor, I would hope -- and this  
11 may -- I don't want to tout our horn too much here, but I would  
12 hope that this time, the Court has been given information from  
13 us that casts more light on what other courts have considered  
14 reasonable sentences in these kind of cases. As you know, we  
15 presented the Court with a memorandum --

16          THE COURT: That said they were all very low. We  
17 double checked that and everything was correct.

18          MR. BECK: Well, Ms. Carmichael and I spent a lot of  
19 time on that, Your Honor, trying to --

20          THE COURT: I can see that, and I appreciate that.

21          MR. BECK: -- trying to give the Court a greater  
22 perspective on these kind of cases because, quite frankly, I've  
23 never had one before. And I know the Court has had a few, but  
24 they tend to happen in other places more often. So we wanted  
25 to give the Court a greater perspective on what might be a

1 reasonable sentence in this case, particularly in light of what  
2 we believe are mitigating factors here concerning Ms. Toebe's  
3 role in the offense and her personal history and  
4 characteristics.

5 So that's why we come before you today again, Your Honor,  
6 at least asking you to consider a three-year sentence and, at a  
7 minimum, consider a sentence below the applicable guideline  
8 range.

9 THE COURT: Okay. That takes care of all the smaller  
10 objections as well. Let's back up to the objections now. Now  
11 we have this more meaty objection with regard to the  
12 enhancement for the obstruction which is still on the table  
13 because that was included in the guideline calculations by the  
14 probation officer in the PSR. Correct?

15 MR. BECK: Right, Your Honor.

16 THE COURT: And that's the last objection that the  
17 defendant raises to the PSR?

18 MR. BECK: That's correct, Your Honor.

19 THE COURT: Okay. And there were some clarifications  
20 by the government with regard to the PSR. Let's flip over to  
21 that.

22 Mr. Douglas, what's styled as Objection No. 2 but you note  
23 in the beginning this is --

24 You can stay there, Mr. Beck, because this is going to be  
25 real quick.

1 MR. BECK: Oh, okay.

2 THE COURT: Thank you.

3 This -- it states this is less of an objection and more of  
4 a request for clarification. Was that just clearing up how the  
5 plea agreement was presented to the Court in that PSR?

6 MR. DOUGLAS: That as well as trying to provide some  
7 additional context to what we discussed in those letters --

8 THE COURT: Okay.

9 MR. DOUGLAS: -- specifically regarding sort of a  
10 predetermined cover story that was discussed to the extent that  
11 that is something the Court considers or gives any weight.

12 THE COURT: Well, that was Objection No. 1 that you  
13 stated this is less an objection, more of an offer, and I  
14 understand that. And I'll await your response after Mr. Beck  
15 puts forth his argument against that enhancement. But there  
16 was a second one that was objection -- this is less of an  
17 objection, more of a request for clarification, but it dealt  
18 with the terms of the binding plea agreement.

19 MR. DOUGLAS: Yes. The way that the government  
20 originally read that paragraph in the presentence report seemed  
21 to be not accurate to how the provision is in the binding plea  
22 agreement.

23 THE COURT: And now you're satisfied with the  
24 revision?

25 MR. DOUGLAS: Yes, Your Honor.

1 THE COURT: Okay. You as well, Mr. Beck?

2 MR. BECK: Correct, Your Honor.

3 THE COURT: Okay. So that leaves only the objection  
4 to the enhancement for the obstruction?

5 MR. BECK: That's right, Your Honor.

6 MR. DOUGLAS: Yes, Your Honor.

7 THE COURT: Okay. Just to make the record clear on  
8 this so the record is clear in case there's any appellate  
9 review of this, what we're talking about is that on  
10 October 4th, probation office -- of this year -- the probation  
11 office received information that some months prior, Mrs. Toebbe  
12 made attempts to contact her husband, Mr. Toebbe, through  
13 illicit channels of communication. Specifically, on two  
14 occasions, she tried to send handwritten letters to him. And  
15 those were intercepted, of course, by those folks monitoring  
16 the communication between the codefendants at the jail;  
17 correct?

18 MR. BECK: That's right, Your Honor.

19 THE COURT: Mr. DeHaven, since you're the PO on this  
20 case, when did these letters first come to your attention just  
21 to make sure it's clear on the record?

22 MR. DEHAVEN: The first copy of a letter we received  
23 was provided by regional jail staff I believe on October 7th.  
24 On October 9th, the government provided copies of both the  
25 letters in question.

1           THE COURT:   Okay.   And you had reached out to the  
2   jail --

3           MR. DEHAVEN:   Yes.

4           THE COURT:   -- based on a request from the Court on  
5   whether there was any interception of anything that would  
6   affect my determination at sentencing in this case and whether  
7   to accept these pleas in fact?

8           MR. DEHAVEN:   Yes, Your Honor.   Subsequent to the  
9   Court's rejection of the previous plea agreement and the  
10   defendant's entry of a second guilty plea, our office reached  
11   out to the jail at the Court's request and in an effort to  
12   provide supplemental information for the presentence report.  
13   We requested information regarding their status, any issues,  
14   disciplinary concerns, or other problems at the jail, and  
15   that's when we were made aware of the attempts at  
16   communication.

17          THE COURT:   And who did you receive these letters  
18   from?

19          MR. DEHAVEN:   The first --

20          THE COURT:   The jail or the government?

21          MR. DEHAVEN:   Initially, we received one letter from  
22   the jail on October 7th.   The government also was working to  
23   provide copies of the letters.   They provided copies of both  
24   letters to us on the 9th.

25          THE COURT:   And for a full understanding, how does it

1 come about that the jail comes into this information, and what  
2 do they do when they obtain information such as this?

3 MR. DEHAVEN: My understanding is the ingoing and  
4 outgoing mail of both Mr. and Mrs. Toebe was monitored by jail  
5 staff with information being provided to the government. The  
6 first letter in question, I believe the December letter, was  
7 attempted to be transmitted through another inmate, an inmate  
8 trustee in the laundry room, and was intercepted. The second  
9 letter was attempted to be mailed out of the jail with a  
10 falsified return address. It came back in, and in the process  
11 of monitoring the mail, incoming and outgoing, the jail  
12 discovered it.

13 THE COURT: So I presume that the government gets  
14 these intercepted communications close in time to when they're  
15 intercepted?

16 MR. DEHAVEN: Yes. I believe both letters were in  
17 possession of both the government and defense counsel in early  
18 January of 2022.

19 THE COURT: So I guess my question is, Ms. Smolar or  
20 Mr. Douglas, why weren't these provided to the Court?

21 MR. DOUGLAS: Your Honor, really, you know, as this  
22 came up, as -- and everything he described is accurate.  
23 Mr. DeHaven. When this came up in early October -- and he only  
24 really brought to the attention the first letter. Said, oh,  
25 well, actually there's two letters. Okay.

1           THE COURT: Okay. I appreciate your filling in the  
2 blanks on this.

3           MR. DOUGLAS: Yes. And, Your Honor, it was not any  
4 kind of a deliberate decision, as I've indicated to  
5 Mr. DeHaven, that we sort of withheld that from the probation  
6 office. Of course not. At the point where they entered the  
7 pleas, we kind of moved on. Moved on to getting their  
8 cooperation, which the Department of Navy values extremely in  
9 this case, and got both of their cooperations. And so we  
10 weren't even really considering the letters at all anymore at  
11 that point in time.

12           THE COURT: And no one thought, Ms. Smolar or you,  
13 that it would have been important for the Court to consider the  
14 letters considering their nature?

15           MR. DOUGLAS: In hindsight at this point, Your Honor,  
16 obviously, I can see where this would be something that's  
17 relevant to the Court.

18           THE COURT: All right. Well, to be clear on the  
19 record on these -- thank you.

20           MR. DOUGLAS: Thank you.

21           THE COURT: The first letter is dated December 21,  
22 2021, and it starts with, "Flush this once you've read it."

23           "Dear Jon,

24           "Flush this once you've read it. My feelings right now are  
25 very complex and include feeling betrayed, lied to, abandoned,

1 and cheated. But you don't simply throw away 18 years of  
2 marriage. I still love you. Beyond that, I don't know what to  
3 think.

4 "First, it was a bitcoin algorithm that was going to make  
5 us our millions. Then it was selling the algorithm itself.  
6 Then it was these privacy deals with encryption keys and God  
7 knows what else. And the whole time, it was all bullshit.  
8 You've put me in great danger. Even with the weakness of the  
9 government's case, I may still be convicted on circumstantial  
10 evidence. I could go to jail for life for something I didn't  
11 do.

12 "My lawyers don't think they will give you a plea deal that  
13 doesn't involve me pleading guilty too. I may rot in here  
14 unless you do what you're probably trying to avoid doing.  
15 Plead guilty. Tell them the truth. I didn't know anything  
16 about any of this. That's the only way I get out of here. I  
17 hate to ask you to do it, but if you don't for me, do it for  
18 our sons. They deserve to be raised by one of us.

19 "They are going to appeal the rejection of my detention  
20 hearing, but my lawyers don't have any much hope of that  
21 succeeding. They really think that the best hope for me is a  
22 guilty plea from you. I don't know why you chose to do what  
23 you did. I can't hope to ever understand the mindset, but I  
24 hope I can still count on you to do the right thing and tell  
25 the truth at this stage. If you plead guilty, they may still



1 be lenient with you.

2 "I'm always thinking about you and praying you will do  
3 what's right."

4 And then she signed it "Love, Diane." But there's a PS  
5 that says, "I'm so sorry for not sending more messages through  
6 the phone. They're always listening. I was told if I even  
7 said I love you, it would be used against me."

8 And there's a second part to this letter.

9 "When you get this, please reply. My roommate works in the  
10 laundry and can intercept and deliver messages. If your  
11 laundry bag has a note for me, tie a sock around the knot of  
12 the bag. That way she will know to get the note before it goes  
13 in the wash."

14 And then she says, "I'm now in BJ. Goldie will still do  
15 letters for us."

16 Then there's a second letter, January 4, 2022, and this one  
17 was sent by what they call or refer to in the jail as a  
18 boomerang where Ms. Toebbe, as confirmed on the envelope -- a  
19 copy of which the Court has received -- put Mr. Toebbe's name  
20 in the return address there at the ERJ here in Martinsburg in  
21 the return address spot. And then it went to L. Toebbe at --  
22 who I presume is a fake person -- at a fake address in  
23 Martinsburg. So basically, it's sent. It boomerangs. When it  
24 comes back, it goes to the return address so that's how  
25 Mr. Toebbe would have gotten ahold of it if it wasn't

1 intercepted.

2 This letter of January 4, 2022, reads:

3 "Dear Jon,

4 "I'm trying again to get a message to you. My friend  
5 swears that this will work. It's called boomeranging. The  
6 things you learn in this place. I originally tried to send you  
7 a message by the laundry, but this may be safer. Tell me if  
8 you got my first note by pulling the same trick in reverse.

9 "I'd tell you that this place is hell, but you already know  
10 that. What you may not know is that my lawyers aren't so sure  
11 of my chances unless you plead guilty and tell the truth that I  
12 had nothing to do with this and give up the locations and/or  
13 passwords for where you've hidden the money and the secrets.  
14 They think I'm a flight risk who will defect and sell what you  
15 had if they let me out. And they won't give you a plea deal  
16 that isn't contingent on my taking one too. Also, we need your  
17 testimony to get me out, and we can't call you as a witness  
18 unless you've pleaded guilty."

19 And then she struggles with whether it's "pled" or  
20 "pleaded" and then says "sigh."

21 "My lawyers say you will have to do this eventually. I  
22 don't know what you're being told. My feelings are all over  
23 the place. Of course I love you. I've loved you for 20 years,  
24 but I also feel hurt, betrayed, abandoned, and lost. All that  
25 talk about bitcoin and about some of the algorithm and then the

1 privacy" -- I don't understand what that means -- "and then the  
2 privacy" -- I can't understand the word. The privacy nuts  
3 maybe -- "who could have been criminals for all we knew." I  
4 think the word is "nuts" there.

5 "I believed you, and it was all bullshit. Right now I need  
6 to focus on the boys and getting back to them to give them  
7 something of what remains of their childhood. They deserve  
8 that much.

9 "I wish I knew what else to say. You heard, I think, that  
10 I got moved to B5 because I was being threatened. That was  
11 scary as hell. And if it happens again, the only place they  
12 can put me is solitary since they don't have protective  
13 confinement for women here. I am scared. I'm keeping my head  
14 down, but I just never know when it will start up again.  
15 Please tell me what you're thinking. I'm so desperate and  
16 alone.

17 "Love, Diana."

18 So that's not obstructing, Mr. Beck?

19 MR. BECK: Well, Your Honor, if I may first touch on  
20 the question you asked Mr. Douglas about the Court not having  
21 this information previously.

22 THE COURT: Did you? When did you get it?

23 MR. BECK: I had it -- I think I had -- I had one  
24 letter for sure. I think I had both of them, and I'm not  
25 saying I didn't have both of them. I certainly had one of

1    them.

2           THE COURT:  I don't expect -- in asking that  
3    question, I don't expect for you as the defense attorney to be  
4    throwing a shovelful of dirt on your defendant when she's  
5    already down -- on your own client.  So I'm not saying you  
6    didn't provide anything you should have to the Court, but I'm  
7    curious as to when you received it.

8           MR. BECK:  It was certainly in the -- it was prior to  
9    the entry of our first plea, Your Honor.  The exact date I  
10   cannot say, but Mr. Douglas -- I have no doubt his side  
11   provided it to us in a timely manner.  We were --

12          THE COURT:  So the -- so we were here on the -- so it  
13   was before you entered the -- before you reached the first plea  
14   agreement or before we came here for the Court to consider the  
15   plea?

16          MR. BECK:  I'm certain it was before we reached the  
17   first plea agreement, Your Honor.

18          THE COURT:  And when did you reach the first plea  
19   agreement in this case?

20          MR. BECK:  I have it here in my notes, Your Honor,  
21   but --

22          THE COURT:  I'll find it.  I only have the second one  
23   here in front of me easily retrievable.

24          MR. BECK:  I believe it was February of this year,  
25   Your Honor, if I'm not mistaken.

1 THE CLERK: 2/14.

2 THE COURT: 2/14. That's when it was signed.

3 MR. BECK: Okay. February this year.

4 THE COURT: Okay. Thanks, Chad.

5 MR. BECK: So I do, in fact, believe Mr. -- I mean,  
6 Mr. Douglas may be able to confirm this but -- and I don't want  
7 to misstate this, but I'm fairly certain that we were aware of  
8 at least one of the letters prior to entry of the first plea  
9 agreement.

10 THE COURT: Did you ever -- were you ever aware of  
11 them, Mr. Compton?

12 MR. COMPTON: Yes, Your Honor.

13 THE COURT: Okay. When did you receive them? Again,  
14 I don't expect you to throw dirt on your client to bury him on  
15 this sort of information to bring it to the Court's attention.

16 MR. COMPTON: I don't recall honestly, Your Honor,  
17 when exactly I received them. It was close in time to when  
18 they were intercepted and shortly after the government, I  
19 believe, was made aware. I --

20 THE COURT: So before you all came here for me to  
21 consider the original plea agreements?

22 MR. COMPTON: I'm almost positive it was before the  
23 change of plea hearing which was on the 14th. I believe it was  
24 closer in time to when they were intercepted.

25 THE COURT: Okay. Thank you.

1       Mr. Douglas.

2               MR. DOUGLAS: Yes, Your Honor. The -- both letters  
3 were sent to both counsel within a week or so of our receipt of  
4 them so within the first half of January 2022 which would be a  
5 month before the first pleas were reached.

6               THE COURT: Thank you.

7       Mr. Beck.

8               MR. BECK: So, Your Honor, I just want to explain  
9 that we had the letters. We subsequently entered -- and  
10 obviously having received the letters, it was disappointing to  
11 counsel that Mrs. Toebbe had made this effort. We certainly --  
12 you know, as attorneys we weren't happy with that, but after  
13 we -- well, a couple things. We -- after we entered the plea  
14 agreement and while we were negotiating it, I can say and I can  
15 confess that it never occurred to me that these would rear  
16 their heads again and became an issue at the sentencing  
17 hearing. Perhaps -- and I can explain in a moment why the  
18 thinking was in that direction at the time. Some of it was  
19 though that it was, as Mr. Douglas said, we reached a plea  
20 agreement; and it's like after the ballgame where everybody is  
21 fighting during the game and hates each other. You come  
22 together, you shake hands, and, you know, all sins are  
23 forgiven. And it just never --

24               THE COURT: But the referee never saw the  
25 interaction.

1 MR. BECK: I agree, Your Honor.

2 THE COURT: The referee that has to make the call.  
3 Right?

4 MR. BECK: The referee had to make a call here. But  
5 -- and, again, I'll discuss in a moment why the other factors  
6 that I think went into our not thinking this would be an issue,  
7 in addition to the fact that we were at that stage where we had  
8 entered a plea agreement with the government, and we were --  
9 had a binding plea, and there really wasn't any more that we  
10 were fighting about, and Mrs. Toebebe was cooperating and had  
11 admitted her guilt. So I --

12 THE COURT: So she -- so admitted her guilt by  
13 saying -- by not saying I just thought this was some bitcoin  
14 thing. She admitted her guilt in the charge to which she is  
15 about to be --

16 MR. BECK: That's right.

17 THE COURT: -- about to be found guilty. Right?

18 MR. BECK: Right. And, you know, at that point --

19 THE COURT: So the bitcoin was a cover story?

20 MR. BECK: No question, Your Honor. And I want to  
21 talk about that for a second if I can. So the question before  
22 the Court now is whether or not her ill-advised and unfortunate  
23 decision to try to send these letters to her husband should  
24 justify an obstruction of justice enhancement under the  
25 guideline. And what I would say to that, Your Honor, is that

1 the guideline itself talks about two kinds of obstruction as I  
2 read it in Commentary No. 1. It talks about the classic type  
3 of obstruction that we have seen more often in this court and  
4 other courts where someone is indicted. There's a witness  
5 that's going to testify against them. They either make threats  
6 to them or their family or they try to bribe them. But there's  
7 no --

8 THE COURT: Or they try to encourage them to perjure  
9 themselves --

10 MR. BECK: That's right, Your Honor.

11 THE COURT: -- as she did here.

12 MR. BECK: The --

13 THE COURT: Plead guilty and tell them I'm innocent.

14 MR. BECK: The distinction though, Your Honor, I  
15 think is that in those scenarios, the classic type of  
16 obstruction, there is no preconceived plan between the two  
17 parties that are subject to -- that are the subject of the  
18 alleged obstruction. In other words, the person who is on  
19 trial didn't have a plan prior to getting arrested and  
20 prosecuted. That, hey, I'm going to threaten you, and you're  
21 going to tell -- that's usually not what we're talking about.  
22 And the reason I say that, Your Honor, is if you look at  
23 Commentary Note 1, it makes a distinction about obstructed --  
24 obstructive conduct that occurred prior to the start of the  
25 investigation, and it talks about that sometimes may be covered



1 if the conduct was purposely calculated and likely to thwart  
2 the investigation or prosecution of the offense.

3 THE COURT: And it was -- right? -- because that was  
4 their cover story on how Mrs. Toebe was innocent, and her  
5 husband was going to take the fall for it. So maybe in the  
6 usual case, defendants aren't as smart as these two, but  
7 they're -- this offense of -- that's about to be the offense of  
8 conviction involves a covert operation. Stuff in a thumb drive  
9 and a peanut butter sandwich. A lot like stuff in a contraband  
10 note at the jail, against the jail rules, into a laundry basket  
11 with a sock tied around it. Right?

12 MR. BECK: Right, Your Honor. You're correct. This  
13 was a preconceived, preplanned cover.

14 THE COURT: And then she continued it at the jail.

15 MR. BECK: Well --

16 THE COURT: She kept that plan in action. She wrote  
17 a note to the defendant, to Mr. Compton's client, Mr. Toebe,  
18 that basically pressures him with, oh, I'm so scared. My  
19 children. You got to tell the truth which she knew wasn't the  
20 truth. When you plead guilty, you know, you plead guilty, and  
21 you deploy this -- basically to me, how I interpret this is now  
22 it's time to deploy the cover plan. So you go forth, and you  
23 plead guilty, and you perjure yourself and tell them I had  
24 nothing to do with this.

25 MR. BECK: What I would say to that, Your Honor,

1 first of all, is that -- I think it's -- it should be  
2 considered a factor in the Court's evaluation of this that  
3 there's no dispute that the plan, the cover, was the brainchild  
4 of Mr. Toebbe who was running this operation.

5 THE COURT: It looks like she's driving the bus, and  
6 it looked like she was driving the bus in the communications  
7 that I had to review in preparation for the bond appeal  
8 decision that Magistrate Trumble made way back when I first got  
9 involved in this case as well.

10 MR. BECK: Well, there were communications between  
11 her and Mr. Toebbe where they talked about what they were doing  
12 and why. But I don't think there's any dispute -- and, you  
13 know, if the government disagrees or Mr. Toebbe disagrees, they  
14 can certainly tell the Court -- that this was his cover plan to  
15 purposely protect Mrs. Toebbe in the event they were both  
16 captured so that there would be someone remaining to take care  
17 of their children.

18 THE COURT: Okay. Let's ask Mr. Compton as you  
19 referred to Mr. Toebbe's counsel.

20 Mr. Compton, who is driving the bus on this cover story?

21 MR. COMPTON: Your Honor, I am hesitant to insert  
22 Mr. Toebbe into this scenario. Mr. Toebbe never received these  
23 communications from the codefendant. I am aware through  
24 communications with my client that prior to them being  
25 arrested, they had discussed what would happen if they were to

1 be arrested. I'm also aware that when Mr. Toebbe was arrested  
2 and counsel was appointed that we had proceeded on the path  
3 that the Court is now -- has seen over the last several months,  
4 including our interactions with the government and our  
5 compliance with paragraph 7 of the plea agreement.

6 Mr. Toebbe -- I mean to the extent I can answer the Court's  
7 question, Mr. Toebbe did not direct Mrs. Toebbe in any way to  
8 write these letters. He didn't send her any letters that I'm  
9 aware of --

10 THE COURT: You're unaware -- are not aware of them  
11 either?

12 MR. COMPTON: So, again, I guess I'm hesitant to  
13 insert Mr. Toebbe into this. He has proceeded on the path --

14 THE COURT: On his own path.

15 MR. COMPTON: -- from the very beginning of his case.  
16 I believe he has been truthful and honest throughout. I know  
17 that doesn't quite answer the Court's question.

18 THE COURT: That's fair. As his counsel looking out  
19 for his best interest, I suppose that puts you in a bad spot,  
20 and that's as far as you can go. So I understand that.

21 MR. COMPTON: Thank you.

22 THE COURT: Mr. Douglas, did you have something to  
23 add before we go back to Mr. Beck?

24 MR. DOUGLAS: Yes, Your Honor. The government would  
25 just caution that the information came from Mr. Toebbe pursuant

1 to his plea agreement, his debrief information, and deserves  
2 some protections which is why, you know, that probably also  
3 shouldn't be gotten into. Also the way that the --

4 THE COURT: You can't get into the cover story?

5 MR. DOUGLAS: To ask him about his cover story when  
6 he told us under a plea agreement? It was debrief information  
7 that has protections under the guidelines. That just -- I'm  
8 just -- I'm just --

9 THE COURT: Okay --

10 MR. DOUGLAS: I'm just letting the Court --

11 THE COURT: -- that's fair.

12 MR. DOUGLAS: -- know as matter of fact --

13 THE COURT: That's fair.

14 MR. DOUGLAS: -- it was debrief information. That's  
15 all.

16 THE COURT: That's fair. And I think having these  
17 letters before me and reading them in the same vein as I read  
18 all jail correspondence both in years as a prosecutor and here  
19 on the bench, I have a pretty good understanding, I believe, of  
20 what the motivation was for the letters, what the intent was,  
21 and whether or not Ms. Toebbe obstructed or not. So thank you,  
22 Mr. Douglas. We're going to take you out of the hot seat,  
23 Mr. Compton.

24 I think I have all I need, but I will entertain your  
25 argument on the objection further, Mr. Beck, as far as you want

1 to go in the hope that for you and your hope, I guess, that you  
2 can convince me otherwise.

3 MR. BECK: Well, Your Honor, I just have one more  
4 point I'd like to make with regard to this issue. Even though  
5 counsel -- and I understand counsel's concerns about saying too  
6 much and the government's as well. There's -- I don't think  
7 there's any dispute, and I think Mr. Compton did acknowledge  
8 this was a preconceived plan by the parties. And the guideline  
9 talks about influencing someone to commit perjury or  
10 intimidating, threatening, or otherwise unlawfully influencing.

11 When I look at these letters, Your Honor, obviously, when  
12 Mrs. Toebbe falsely stated in them that this was about a  
13 bitcoin operation and that he had falsely told her it was, he,  
14 if he had received them, would have immediately known that was  
15 part of the plan because he knew that was not true. So --

16 THE COURT: But -- and she knew it was not true, yet  
17 she says, "Tell the truth."

18 MR. BECK: Which that's the point I forgot to  
19 mention, Your Honor. I'm not sure it's going to sway the  
20 Court's decision, but her declarations of innocence at that  
21 time are not obstruction of justice per the guidelines. So  
22 that fact alone -- you know, if it wasn't for the fact that she  
23 was communicating with him, I don't think we -- there would be  
24 any arguments of obstruction of justice because under the  
25 guidelines --

1           THE COURT: No. If she came in here before she pled  
2 guilty and said, "I'm not guilty," that's her right. But what  
3 she's done in a letter is encourage him to lie.

4           MR. BECK: Well, that was the point I was going to  
5 make before I got sidetracked, Your Honor, and I apologize for  
6 that. Is that how -- what I'm failing to understand is what  
7 would her saying that I'm following the plan that you agreed to  
8 and you already told me you were going to follow, how does that  
9 influence him to do something he wasn't already going to do?  
10 In other words, it wasn't --

11           THE COURT: People change their mind once they're  
12 incarcerated and deals are being wheeled and dealt between  
13 defense counsel and the government. Sometimes folks -- their  
14 position changes, and they decide to save their own petard  
15 instead of somebody else's, Mr. Beck. You know, maybe --

16           MR. BECK: I understand that, Your Honor.

17           THE COURT: -- she's just making sure -- sounds to me  
18 as though she was just making sure he deployed the cover story  
19 for her so she got out of this unscathed.

20           MR. BECK: Or she could be just letting him know she  
21 was deploying the cover story which, again, I think is the  
22 obvious --

23           THE COURT: Well, if she was doing it on her own, she  
24 wouldn't have said, "Tell the truth."

25           MR. BECK: Which, again --

1 THE COURT: Which wasn't the truth.

2 MR. BECK: No. And he knew it wasn't the truth so  
3 why -- you know, if it was a pure threat or an intimidation or  
4 intent --

5 THE COURT: I think it's pressure. I don't see it as  
6 a threat. It's pressure. She's pressuring him. It sucks in  
7 here. I'm scared. Do it for the children. This is horrible.  
8 I love you.

9 MR. BECK: Well, Your Honor --

10 THE COURT: We once had a note passed right up here  
11 during the course of jury selection. I think that may have  
12 been one of Mr. Compton's cases where we had --

13 Mr. Moss is raising a hand. He's taking -- he's not taking  
14 credit for that. That was his case where the defendant slipped  
15 it right to his codefendant, his baby mama, and it was  
16 basically you -- I'm watching -- basically, I'm watching you.  
17 You better tell the truth which wasn't the truth at all but  
18 that happens --

19 MR. BECK: I know it happens, Your Honor.

20 THE COURT: -- right here in plain view.

21 MR. BECK: I just -- at least this is my experience.  
22 The first time that I've ever had a case where the parties had  
23 this plan before they ever got arrested.

24 THE COURT: This is the first time you'd had clients  
25 that are confessed traitors; that they had covert operations;

1 that the whole offense was based in deceit and looking out for  
2 their own selves -- if you believe the further story, their  
3 family -- in committing these horrible acts against this  
4 nation. But it's the first case because you never had clients  
5 in a case such as this who were smarter than your average bear.  
6 Well, actually, for all practical purposes, thought they were  
7 smarter than your average bear but were not, and this is how  
8 they do things: hide, deception, covert, hide the thumb drive  
9 in the peanut butter sandwich, hide the note in the laundry  
10 basket with a sock tied around it. It's -- yes, it's unusual.  
11 This is an exceptional story. It's kind of one right out of  
12 the movies. But it happened, and this is obstruction just like  
13 your basic drug dealer who slips his baby mama a note that says  
14 you'd better be telling the truth.

15 MR. BECK: Well, Your Honor, I think I've exhausted  
16 all my arguments. I'll just make the final point, Your Honor.  
17 The consequence of this, given that the letters were  
18 preconceived, in my opinion, they weren't attempting to  
19 influence him because he knew they were lies. He knew they  
20 were lies. And it was her most likely telling her she was  
21 going -- him he was going off the plan. They were sent early  
22 on at a time when Mrs. Toebbe was --

23 THE COURT: Someplace she'd never been before.

24 MR. BECK: In hell to use her words. And I will tell  
25 you to the Court that we had a heck of a time getting her on



1 the proper medications so that she could maintain her  
2 psychological stability. She had been threatened, as she put  
3 in the letter, by another inmate. And the letters were never  
4 received by her husband, and they had no impact whatsoever on  
5 the prosecution of this case.

6 THE COURT: But they impact -- they impact the  
7 prosecution of the case if you look at it not in the long run  
8 but in the middle because they had this plan to obstruct that  
9 would have put the government off the trail of Mrs. Toebbe and  
10 totally on the trail of Mr. Toebbe in the investigation and  
11 perhaps even in preparation for the trial. Right?

12 MR. BECK: It was -- that was the plan, Your Honor,  
13 but looking -- you know, this goes back to Application No. --  
14 Note No. 1 where we're talking about these preconceived plans.  
15 One of the elements in order for that to be considered  
16 obstruction is that it be likely to thwart the prosecution.  
17 Now, thwart, I don't know the exact definition of that, but  
18 when I use it, it means likely to stop it. These folks weren't  
19 going to stop this by this half-baked, cockamamie story that  
20 they had created. The idea that the government was not going  
21 to get Mrs. Toebbe or Mr. Toebbe because they came up with this  
22 story. I know the government would have gotten them.

23 So just to finalize my point, Your Honor, it just seems to  
24 me that in this case, because of the circumstances I've talked  
25 about, enhancing her sentence by three levels, which in effect

1 adds three years -- or two levels -- adds three years to her  
2 guideline -- minimum guideline range, just doesn't seem  
3 appropriate. But that's all I have to say about it, Your  
4 Honor.

5 THE COURT: Thank you, Mr. Beck.

6 Mr. Douglas, any response?

7 MR. DOUGLAS: No, Your Honor.

8 THE COURT: To this Court and I find that the  
9 intention of these parties to establish a false narrative of  
10 plausible deniability from Mrs. Toebbe was plainly calculated  
11 to frustrate the investigation and prosecution of the offense  
12 of conviction. Further, Ms. Toebbe's actions to prod  
13 Mr. Toebbe to deploy their cover story while she was in jail,  
14 her attempts at correspondence, they were all taken well after  
15 the arrest and detention in this case.

16 She in her letter is basically encouraging him to deploy  
17 the story, and she is basically telling him to lie. She says,  
18 "Tell the truth," but we know it's not the truth. So basically  
19 what she's saying is lie. Lie. Roll this lie out to save my  
20 rear.

21 She made several attempts -- two that we know of -- to  
22 induce Mr. Toebbe to plead guilty and provide statements to  
23 authorities confirming her ignorance of his criminal scheme  
24 which we know, because she's pled guilty now, was not his  
25 criminal scheme. It was their criminal scheme. She made

1 repeated references to the children. The potential for her to  
2 care for them. And she provided to Mr. Toebbe basically in  
3 these letters that if he pled guilty, she basically would get a  
4 lesser sentence. She encouraged him to plead guilty so he  
5 could be called as a witness in support of her efforts to  
6 secure her own release from custody.

7 And nothing is clearer than in this letter where she knows  
8 not -- knowing full well that it's not the truth where she  
9 says, "Plead guilty. Tell them the truth." And she says  
10 before that -- this is the whole sentence. And this is in the  
11 initial December 21, '21 letter. "I may rot in here unless you  
12 do what you are probably trying to avoid doing. Plead guilty.  
13 Tell them the truth. I didn't know anything about any of  
14 this."

15 So she feels as though maybe now he's incarcerated that  
16 he's going to be backing out of the cover story, and she tries  
17 to guilt him into staying with the cover story and deploying  
18 that plan. That's obstruction plain and simple. It's a  
19 different type of obstruction that we see in most of our normal  
20 run-of-the-mill, for example, drug cases, but it's no different  
21 really when you boil it down to it. It's encouraging a  
22 codefendant to lie to save the other codefendant's rear.

23 And, therefore, I'm going to overrule the objection. The  
24 presentence report will not be amended, but I'll note the  
25 exception of the defendant to the Court's ruling here today.

1        Now, having this issue of obstruction come up in the  
2 guideline calculations, counsel, in Mrs. Toebbe's case opened a  
3 can of worms I'm afraid in this case with regard to the  
4 guideline calculations and further calculation.

5        I'm going to give you the opportunity, Mr. Douglas, and  
6 especially you, Mr. Beck, to present to the Court arguments on  
7 why Mrs. Toebbe, based on this obstruction, shouldn't lose her  
8 acceptance of responsibility. As I see it, she violated the  
9 rules of the jail so that's nothing more than the  
10 run-of-the-mill drug dealer in jail who is making the hooch in  
11 the ceiling or selling drugs in the jail. Same as the -- or in  
12 the same vein as an original offense that got them in there.  
13 She's continuing these covert operations in the jail, and it  
14 was obstructing. Why shouldn't she lose her acceptance of  
15 responsibility for that?

16        Mr. Beck.

17                MR. BECK: Your Honor, the reason is, in my opinion  
18 and our opinion, is that, again, those efforts occurred early  
19 on in the case, they were ill-conceived, agreed, and after  
20 that, Mrs. Toebbe told the truth. She accepted responsibility.  
21 She has cooperated extensively. And she has left nothing on  
22 the table as far as what her involvement in this offense was.  
23 Should she have done what she did? No. But it has not in any  
24 way impaired the prosecution of this case. In fact, she's done  
25 everything she could to make the prosecution easier since doing

1 these things. So -- and I don't have the guideline section in  
2 front of me, but -- well, under the --

3 THE COURT: 3E1.1.

4 MR. BECK: Yes. Under the objection 3C -- under the  
5 Section 3C1.1, it does specifically talk about, Your Honor,  
6 that there are cases where one could obstruct justice as this  
7 Court has found but also accept responsibility and get credit  
8 for that. And this seems to be the classic case where that  
9 would fit. I mean, she did these things that she shouldn't  
10 have done. Again, we -- you know, the Court does not accept  
11 our explanation of why she did it, but she did them, and  
12 subsequent to that, she did everything she could to accept  
13 responsibility, Your Honor. So I don't -- it just seems this  
14 is the classic case where you can have an obstruction and also  
15 an acceptance of responsibility.

16 THE COURT: But in Application Note 4, which touches  
17 on 3E1.1, it states there may be extraordinary cases in which  
18 adjustments under both 3C1.1 and 3E1.1 may apply. What's  
19 extraordinary about this?

20 MR. BECK: Well, I think it's extraordinary -- well,  
21 two things. One, Your Honor, the conduct itself, albeit wrong,  
22 had no impact on the case. So what is extraordinary in those  
23 circumstances I think is subject to different definitions. But  
24 after she did it, again, she pled guilty and extensively  
25 cooperated. As the Court knows from our previous filings, this

1 is a case where, you know, everyone after fighting -- and in  
2 her case, sending these letters where she didn't tell the  
3 truth -- made an agreement and left the field shaking hands,  
4 and at that point, she's done nothing but accept  
5 responsibility. And it just seems -- you know, as the Court is  
6 determined, she's going to get a two-level enhancement for  
7 obstructing justice. If the Court were -- just thinking ahead,  
8 if the Court were to rule that way, it might be a disincentive  
9 for a lot of people not to plead because, you know, there are  
10 people out there -- you know, I'm sure there are other cases --  
11 maybe not quite as elaborate as this one -- where people do  
12 things in the beginning of the case they should have done, but  
13 then they enter a plea, and they get the credit for acceptance  
14 of responsibility. So I just think this is a case where both  
15 sections should apply.

16 THE COURT: Thank you, Mr. Beck.

17 Mr. Douglas.

18 MR. DOUGLAS: Your Honor, the government doesn't  
19 believe and the government is not asking the Court to take  
20 Diana Toebbe's acceptance of responsibility for some of the  
21 same reasons that Mr. Beck has outlined.

22 Her conduct was early on in the case. She has pled guilty  
23 twice -- twice in a timely manner that avoided any trial  
24 preparation and, in fact, allowed us to focus on Mr. Toebbe's  
25 cooperation which again -- I don't think it's a small matter --

1 the Department of Navy highly valued and allowed us to not  
2 think, oh, she's still out there; we've got to focus on her and  
3 getting her to plead guilty --

4 THE COURT: But that was --

5 MR. DOUGLAS: -- and not be able to go into him.

6 THE COURT: But that would support the government's  
7 motion under 3E1.1(b) that can only be made if the Court gives  
8 the defendant acceptance of responsibility under 3E1.1(a) in  
9 the first place.

10 MR. DOUGLAS: Correct. Just --

11 THE COURT: So let's deal with in the first place.

12 MR. DOUGLAS: Okay. The prosecution is the victim of  
13 this obstruction of justice -- right? -- because we're talking  
14 about affecting the prosecution. So I'm trying to give the  
15 Court the perspective that the prosecution had in this case and  
16 how it actually worked.

17 THE COURT: Okay.

18 MR. DOUGLAS: She pled guilty and accepted  
19 responsibility so we could then focus on him. Get his  
20 cooperation which was very valuable to the Department of Navy.  
21 Then she even did more than that by supplementing his  
22 cooperation because there was a piece of information that he  
23 said she had, and she gave us immediately, and it was extremely  
24 helpful in assessing the scope of his conduct and any further  
25 potential damage. So --

1 THE COURT: It just corroborated what he told you.

2 MR. DOUGLAS: No. I'm referring to the  
3 cryptocurrency wallet passphrase that he said she had.

4 THE COURT: Uh-huh. But he said there's nothing in  
5 that wallet; right?

6 MR. DOUGLAS: He did say there was nothing in that  
7 wallet but --

8 THE COURT: And when she gave you the passphrase, he  
9 was right.

10 MR. DOUGLAS: Yes, he -- yes, he was, Your Honor.  
11 But if he says I don't have the passphrase, she has the  
12 passphrase, and we never get the passphrase, we can never look  
13 into the wallet and see if there's actually money in there.  
14 And maybe he's lying to us, which is what we're trying to do is  
15 corroborate what someone is telling us, and we're trying to get  
16 into encrypted cryptocurrency wallets which we cannot otherwise  
17 get into.

18 So the government does believe it's somewhat of an  
19 extraordinary case where you do have this obstruction early on.  
20 And, look, I've been a prosecutor for ten years. Right?  
21 Prosecuted drug defendants. Okay. Then later moved on to  
22 white collar, public corruption, civil rights. And those  
23 aren't your typical hardened criminals; right? They do weird  
24 things at the beginning. They have a lot harder time accepting  
25 that they committed a crime.



1 THE COURT: Or accepting that it's going to stick.

2 MR. DOUGLAS: Accepting that it's going to stick.

3 I'm going to get out of this somehow. Okay. So this isn't  
4 your typical drug case where you have a hardened criminal that  
5 is engaging in this conduct. And that's just from my  
6 perspective. Again, because we're talking about obstructing  
7 the prosecution, I'm only trying to give the Court a full  
8 picture from our point of view. And so for all those reasons,  
9 we don't believe the Court should take her acceptance of  
10 responsibility. Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Douglas.

12 Looking at 3E1.1(a) of the guidelines, it states if the  
13 defendant clearly demonstrates acceptance of responsibility for  
14 his -- or in this case her -- offense, decrease the level --  
15 the offense level by two levels. I don't find there was a  
16 clear demonstrable acceptance of responsibility in this case  
17 based on this defendant's actions.

18 And the application notes -- reviewing the application  
19 notes which gives some guidance to this Court, those  
20 application notes further support my finding. In looking at  
21 number one, Application No. 1(a), it states in part, "A  
22 defendant who falsely denies relevant conduct that the Court  
23 determines to be true has acted in a manner inconsistent with  
24 acceptance of responsibility."

25 She falsely denied her cooperation, her part of the

1 conspiracy in these letters, and she leaned on Mr. Toebe to  
2 roll that false story out. She also, when looking at  
3 Application Note 1(b), kind of falls to the contrary of that.  
4 We see for acceptance of responsibility, there must be a  
5 voluntary termination or withdraw from criminal conduct or  
6 associations. So she's still not withdrawn but trying to fan  
7 this cover story through these letters to Mr. Toebe.

8 And in addition to that, in addition to trying to roll out  
9 part B of the conspiracy, the cover story, she's also  
10 committing violations at the jail by secreting this  
11 correspondence that she's not supposed to give to Mr. -- not  
12 supposed to be sending to Mr. Toebe, and she knows that  
13 because the beginning of the first letter says, "Flush this  
14 when you get it."

15 Application Note 3 notes at the bottom, "A defendant who  
16 enters a guilty plea is not entitled to an adjustment for  
17 acceptance of responsibility under this section as a matter of  
18 right." It notes that this evidence of acceptance of  
19 responsibility basically may be outweighed by conduct of the  
20 defendant that is inconsistent with such acceptance of  
21 responsibility. And this certainly was.

22 And it also notes in Application Note 4, "Conduct resulting  
23 in an enhancement under 3C1.1" -- the obstructing, which I've  
24 already found -- "ordinarily indicates that the defendant has  
25 not accepted responsibility for his criminal conduct."

1        Now, it does go on to say there may be extraordinary cases  
2 in which adjustments under both obstructing and acceptance of  
3 responsibility may apply, but this is not the case. And,  
4 therefore, when I review the guideline calculations, I am not  
5 going to give Ms. Toebbe a reduction for acceptance of  
6 responsibility. I'll note the exception of the defendant and  
7 the government to the Court's ruling in that regard.

8        I think we've reviewed all of the objections to the  
9 presentence report. I have given counsel the opportunity to  
10 argue with regard to the Court's position that the defendant  
11 doesn't qualify for an acceptance of responsibility under  
12 Guideline 3E1.1(a) which then does not give the government the  
13 opportunity to request another one-level reduction under  
14 3E1.1(b).

15        And I don't think that leaves anything further before we  
16 get to the guideline calculations, does it, Mr. Douglas?

17                MR. DOUGLAS: No, Your Honor.

18                THE COURT: Mr. Beck?

19                MR. BECK: No, Your Honor.

20                THE COURT: The presentence report is going to be  
21 accepted and ordered filed and made a part of the record  
22 herein. It will be placed in the record under seal. In the  
23 event of an appeal of the sentence imposed herein, counsel on  
24 appeal will be permitted access to the sealed report, but not,  
25 however, to the recommendation section from probation.

1 I will note for the record in this case that, to back up,  
2 on September 27, 2022, this defendant appeared in the United  
3 States Magistrate Court for the Northern District of  
4 West Virginia sitting in Martinsburg. And at that time, she  
5 tendered a plea of guilty by a written plea agreement to  
6 Count 1 of the indictment charging conspiracy to communicate  
7 restricted data. After consideration, the Court accepted the  
8 defendant's plea of guilty to the crime charged in Count 1 and  
9 deferred acceptance of the plea agreement and adjudging the  
10 defendant guilty.

11 Subsequent to acceptance of the guilty plea, a presentence  
12 investigation report was ordered. Having now received and  
13 reviewed that report and ruled upon any factual and legal  
14 issues raised thereby, I find the charge to which Ms. Toebbe is  
15 pleading adequately reflects the seriousness of the offense  
16 behavior. I also find that acceptance of her plea agreement  
17 will not undermine the statutory purposes of sentencing which  
18 are deterrence, incapacitation, just punishment, and  
19 rehabilitation.

20 So at this time, Ms. Toebbe, I accept your plea agreement  
21 and your plea of guilty, and you now stand convicted of the  
22 offense to which you pled guilty under your agreement with the  
23 government.

24 I'll now announce my tentative findings as to the  
25 applicable guidelines. We start in this case with a base

1 offense level of 37 pursuant to Guideline 2M3.1(a)(2). Then,  
2 as we've discussed upon the record, pursuant to Guideline  
3 3C1.1, two levels are added for obstructing or impeding the  
4 administration of justice. Here the Court considered it as  
5 obstructing. That brings us to an adjusted offense level of  
6 39.

7 Defendant has a criminal history category of one based upon  
8 zero points. With a criminal history category of 1 and a total  
9 offense level of 39, the guidelines recommend imprisonment in  
10 the range of 262 to 327 months. I'll note that the binding  
11 plea in this case, which the Court has accepted, has a binding  
12 term that the defendant cannot be sentenced any higher than the  
13 bottom or the lowest number of the applicable guideline range.  
14 So we're at 262 max on this.

15 The guidelines also recommend supervised release in the  
16 range of two to five years; indicate defendant is ineligible  
17 for probation; a fine in the range of 40,000 to \$100,000. And  
18 there is a special assessment fee in the amount of \$100 owed on  
19 that one felony count of conviction. The cost of imprisonment  
20 is \$3,688 per month, the cost of community confinement is  
21 \$2,980 per month, and the cost of supervision is \$371 per  
22 month.

23 Other than the objections we reviewed at the -- at an  
24 earlier time in this proceeding, are there any objections to  
25 the tentative guideline findings, counsel?

1 MR. DOUGLAS: No, Your Honor.

2 MR. BECK: No, Your Honor.

3 THE COURT: Then the guidelines as announced will be  
4 the advisory guidelines applicable to sentencing in this  
5 matter.

6 Mr. DeHaven?

7 MR. DEHAVEN: Your Honor, I believe the applicable  
8 guideline fine for offense level 39 would be \$50,000.

9 THE COURT: Oh, thank you. So I stand corrected.  
10 Then the applicable guideline fine is in the range of 50,000 to  
11 \$100,000.

12 Any objection to that, counsel?

13 MR. DOUGLAS: No, Your Honor.

14 MR. BECK: No, Your Honor.

15 THE COURT: Okay. Mr. Beck, I will recognize you for  
16 argument on your motion for a variant sentence and also any  
17 other additional factors that which you believe I should  
18 consider today in my decision on what sentence should be  
19 imposed.

20 MR. BECK: Thank you, Your Honor.

21 Your Honor, the sentence that Mrs. Toebbe would receive  
22 under this plea agreement if the Court were to follow the  
23 guidelines or at least the low end of the guidelines is now 262  
24 months. Of course, the guidelines are not the only factor that  
25 the Court must consider in determining what her sentence should

1 be.

2       The number one factor listed under the statute is the  
3 nature of the offense and the seriousness of the offense and  
4 then the characteristics of the defendant. Obviously, this is  
5 a serious offense. The Court has made that very clear. And  
6 they need to be made clear because everyone understands it was  
7 a serious offense, and I understand why the Court made that  
8 statement. But what I think the Court should also take into  
9 consideration with regard to Mrs. Toebbe is that this was not a  
10 crime that she committed at her insistence. It was one that  
11 was initiated by her husband. Her husband was the principal  
12 actor here. He's the one that had the position with the United  
13 States government where he could get access to the information,  
14 understood its significance and remove it, and then know how to  
15 market it, so to speak, to the people who might be interested.

16       Mrs. Toebbe was a housewife, a teacher with a liberal arts  
17 degree, and had no knowledge of what this stuff meant.  
18 Obviously, she knew it was something that she shouldn't have  
19 been involved in trying to transmit. But she did not steal it,  
20 nor did she abuse the position of trust with the government,  
21 nor did she communicate with any foreign government.

22       My point, Your Honor, is that all of the essential elements  
23 of this offense, ones that were absolutely critical to it being  
24 committed, were done by her husband.

25               THE COURT: Couldn't you look at it as though she had

1 the plan, and he had the access?

2 MR. BECK: I'm sorry, Your Honor?

3 THE COURT: Couldn't you also -- an alternative view  
4 of that is she had the plan or was 50/50 part of the plan, and  
5 he just had the access?

6 MR. BECK: I don't think that's what the -- and I  
7 don't want to get out of line here as far as classified, but I  
8 don't think that there's been any evidence that this was a plan  
9 that originated from anyone other than Mr. Toebbe.

10 THE COURT: Well, in the end, does it really matter?  
11 Because she's a principal in the first degree as well. In for  
12 a penny, in for a pound.

13 MR. BECK: I think it matters to the extent of, Your  
14 Honor, when you talk about her culpability. These would be  
15 Mr. Toebbe and her role in the offense. She is more of an  
16 accomplice than a principal in my mind. She did help him. She  
17 went on three of these dead drops. But, again, none of this  
18 would have happened without her husband being in the position  
19 he was, and I believe, from what I've heard, come up with the  
20 idea to do this.

21 Now, secondly, Your Honor, the Court has to consider under  
22 the statute the histories and characteristics of Mrs. Toebbe.  
23 Those are important factors. As you point out, she has no  
24 criminal history. She has no history other than having been a  
25 school teacher, an educated person, a housewife, a mother, and



1 had never been in any kind of criminal involvement her entire  
2 life.

3       What the Court also knows by virtue of our filings is that  
4 she is someone who for many years, up to 25 years I think, has  
5 suffered from serious mental illnesses. And that's documented  
6 by the report we submitted from her -- well, not report, but  
7 from the notes we submitted from her treating physicians that  
8 were contemporaneous to her seeking help for her problems and  
9 also from the psychological evaluation that we obtained in  
10 connection with this case.

11           THE COURT: But there was no mental defense to  
12 this --

13           MR. BECK: No, there is no defense, Your Honor. I'm  
14 not suggesting in any way that she had the inability to  
15 understand the wrongfulness of her conduct.

16       However, what I do think is important to note is -- and  
17 this is documented in all the records we submitted -- that the  
18 scheme to do what they did, culminated or originated or came to  
19 fruition at or about the time these psychological problems were  
20 at an apex for Mrs. Toebbe. There are records indicating that  
21 at around 2016, 2017, when I think this scheme began, she was  
22 suicidal, had to be taken to the hospital on multiple occasions  
23 for suicide risk, and was in a deep, deep dark depression. And  
24 that depression and that anxiety, albeit not something that  
25 would amount to a defense to her crime, one cannot help but

1 think that it clouded her judgment here in a way that is -- it  
2 had an effect on her in a way that it would not -- a normal  
3 person without those problems would not have had. A normal  
4 person without those problems hopefully would have been able to  
5 react differently.

6 And the other thing I would point out, Your Honor, because  
7 it's been discussed that, yes, the issue here was greed. There  
8 was an effort to get money which is the definition of greed.  
9 And looking at these previous espionage cases that have  
10 occurred in other jurisdictions, it appears to me that that  
11 greed really amounts or arises from the traditional purposes of  
12 someone being greedy. Trying to buy a big house. Trying to  
13 have lots of money and have cars and so forth. Here there was  
14 a desire to get money, but going back to what the Court said,  
15 if you look at those emails that were captured by the  
16 government between Mrs. Toebbe and her husband, she genuinely  
17 had a tremendous amount of emotional, psychological distress,  
18 and she was unwell because of her -- you know, some might  
19 say -- some people might disagree with this. Some would say  
20 maybe it was genuine or maybe it was something she should have  
21 had, but she thought the country was going down the tubes. And  
22 you look at those emails, there is no question that that's what  
23 she thought. She was --

24 THE COURT: So she was going to further send it down  
25 the tubes by --

1 MR. BECK: Well --

2 THE COURT: -- helping her husband share secrets that  
3 go to the very heart of this country much less our allies'  
4 defense?

5 MR. BECK: Well, that's how -- that's how --

6 THE COURT: So she wanted to put the final torpedo in  
7 it?

8 MR. BECK: Well, no. I think her goal was to get  
9 out. And I think that -- you know --

10 THE COURT: But burn the whole place down in the  
11 process?

12 MR. BECK: Well, it wasn't a rational decision, Your  
13 Honor. I guess that's my point, Your Honor, is she was so  
14 obsessed with this. She was also clearly operating under a  
15 significant mental illness that caused her to be at a point of  
16 suicide before -- you know, before this stuff even happened.

17 And as I pointed out in one of our memos, there were other  
18 reasons. Her family was in kind of a falling apart situation.  
19 So it was just the perfect storm it seems to me where she made  
20 a bad decision that she may not have made had she not been  
21 suffering from all these problems.

22 Moving on, Your Honor, one of the other factors the Court  
23 has to consider is the risk of recidivism. Mrs. Toebbe, again,  
24 never committed a crime that we know of before this. She  
25 doesn't have any kind of knowledge regarding nuclear submarines

1 or anything else that would allow her to get out of jail one  
2 day and suddenly become an agent for a foreign government.

3 The government has extensively researched the prospect that  
4 there may be other monies or information out there that  
5 Mr. Toebbe and Mrs. Toebbe had, and they've come to the  
6 conclusion with high confidence that there's nothing else out  
7 there that she could ever get her hands on even if she knew  
8 where it was. So there's little, if any, harm that she will  
9 ever do anything, much less something like this again.

10 THE COURT: How do we know that if they had the  
11 Plan B cover story, there is not a Plan C where something else  
12 is secreted for when they get out that they can share and make  
13 money from?

14 MR. BECK: All I can say, Your Honor, is --

15 THE COURT: They're not trustworthy based upon the  
16 offenses they committed and their covert actions both outside  
17 for both of them and then in the jail for Ms. Toebbe. So how  
18 can the Court be assured there's not a Plan C, the get-up plan  
19 for when they're released from incarceration?

20 MR. BECK: I think the way the Court can be assured  
21 is what the government has done. They have --

22 THE COURT: Take them at their word?

23 MR. BECK: Well, and I think they have done  
24 everything they know how to do to confirm that there is no  
25 further information out there. And I would also suggest to the

1 Court that Mrs. Toebe because of her lack of knowledge about  
2 this, she wouldn't know what to do with it if it were.

3 THE COURT: But she may know where it's buried.

4 MR. BECK: Pardon me?

5 THE COURT: She may know where it's buried,  
6 figuratively.

7 MR. BECK: If it were, but there isn't -- at least  
8 according to the government, they have a high degree of  
9 confidence there's not.

10 The last thing, Your Honor, with -- or not last thing but  
11 one other point I want to make with regard to the guidelines,  
12 Your Honor, which you've calculated, is if you look at  
13 Guideline 2M3.1, which is the relevant guideline that we're  
14 dealing with here, as you know, it really has two levels -- and  
15 if the Court will bear with me a second, I left something over  
16 here. It has the level that if you are involved in espionage  
17 involving top secret information, which doesn't apply in this  
18 case, and it has the level 37, which is 5 levels lower than the  
19 top secret if it's other information.

20 And what I find hard to understand, Your Honor, in the  
21 guideline is, as the Court knows, the government uses in  
22 general three levels of classification: top secret, secret,  
23 and confidential. And the guideline says that the level of the  
24 guideline is geared towards the significance of harm that would  
25 be caused if the information is not kept confidential or is

1 disclosed, but it only distinguishes between top secret and  
2 other. And the reason I find that hard to understand, Your  
3 Honor, if you look at -- and I think this is the accepted  
4 definition across the government as to what constitutes  
5 classified information. Top secret is defined as information  
6 that would be reasonably expected to cause exceptionally grave  
7 damage to the national security. And I'm reading from 18 CFR  
8 § 3a.11. Secret information is information that reasonably be  
9 expected to cause serious damage to the national security. And  
10 then confidential information is defined as could reasonably be  
11 expected to cause damage.

12 So then clearly, at least in the government regulations and  
13 under the government definitions of concerned classification,  
14 there's a major distinction between those three categories.  
15 Yet, the guideline, itself, makes no distinction between secret  
16 and confidential. In other words, there's no five-level drop  
17 down from secret to confidential. And the reason that's  
18 important in this case, Your Honor, is that all of the  
19 information that Mr. Toebbe secreted from his place of work and  
20 all the information that they attempted to transmit, neither  
21 fell into the top secret or secret category. It was all  
22 confidential.

23 So it just seems to me that the Court in measuring  
24 whether -- what the appropriate sentence is here, it should  
25 consider that this guideline totally ignores that distinction.

1 Even though in the guideline itself, Your Honor, again, it says  
2 that the guideline is based on what harm would be caused by the  
3 release of the information.

4 Moving on, Your Honor --

5 THE COURT: Well, doesn't -- remember the first  
6 letter we had from Admiral Houston? A six-page letter and no  
7 matter what you call it, this -- your client put this country  
8 in grave danger. Just looking at a couple of the many things I  
9 highlighted in this letter in preparation for my consideration  
10 of whether to accept the original plea agreement, this admiral  
11 concluded that Mr. Toebbe's actions continue to have a lasting  
12 and serious impact on our national defense. He captured some  
13 of most secure and sensitive information about our  
14 nuclear-powered fleet. A critical component of national  
15 defense has been irreparably compromised in the admiral's  
16 words.

17 He stated that the Toebbes' illegal conduct now threatens  
18 critical military advantages because the nation spent billions  
19 of dollars developing naval nuclear propulsion technology and  
20 now the integrity of this protected information was  
21 compromised, undercutting the military advantage afforded by  
22 decades of research and development. That information provided  
23 could provide foreign navies the opportunity to close the gap  
24 in capabilities which would require an extraordinary effort and  
25 resources to restore. The Navy must operate on the assumption

1 Mr. Toebbe's actions resulted in information falling into the  
2 possession of other entities and persons who wish to use it to  
3 damage the U.S.

4 So no matter what you call it -- top secret, restricted --  
5 the harm to this nation is grave, and these are scary times we  
6 live in.

7 MR. BECK: And I'm not arguing that, Your Honor. I'm  
8 just saying that it wasn't top secret which, again, designates  
9 something that even would cause extreme -- I mean under their  
10 own definitions, it would cause extreme danger versus secret  
11 that's likely to cause grave danger and confidential which is  
12 likely to cause danger.

13 Regardless of what the admiral said, and I certainly don't  
14 disagree with him, this information fell into neither one of  
15 those more serious categories. It fell into a serious  
16 category, but one that's not taken into account under this  
17 guideline. And that's the part I don't understand, Your Honor.  
18 It seems to me that if a guideline is going to be based on the  
19 danger that's caused by the release of this information, there  
20 should be some distinction between class -- confidential versus  
21 secret. That's my point, Your Honor. I'm not saying that it  
22 wasn't harmful information that should have -- that could cause  
23 harm to the U.S.

24 Your Honor, the final point that I would like to make is  
25 that ultimately the Court has to decide what is a reasonable



1 sentence in this case because that's what the law requires.  
2 And this goes back to what we talked about early on in this  
3 hearing is we have tried to provide the Court with a greater  
4 perspective on what is considered reasonable in these kind of  
5 cases, Your Honor.

6 Ms. Carmichael and I have listed a number of cases that  
7 have come in the past -- that occurred in the past where people  
8 were accused of espionage. They weren't accused of the  
9 specific offense in this case which is under the nuclear  
10 statute, but they were all engaged in the same kind of  
11 activity, and that is trying to sell secrets they shouldn't  
12 have been selling.

13 The list of cases that we provided, Your Honor, indicate  
14 that even principals -- people that were what we would say like  
15 Mr. Toebbe, ones who were connected to the government and got  
16 the information -- rarely receive sentences that would be  
17 within this guideline range that the Court has adopted.

18 The other point we would make, Your Honor, is that with  
19 regard to the accomplices, which we would characterize  
20 Mrs. Toebbe, there are a number of people who have received  
21 lesser sentences than what we had originally asked for when we  
22 came before the Court.

23 The point being, Your Honor -- and one I just want to bring  
24 to the Court's attention because I think it really highlights  
25 the point I'm trying to make or we're trying to make is if you

1 -- there's a fellow named Ron Rockwell who was prosecuted in  
2 Utah back in '06, pled in 2019. He was an army officer who  
3 spoke Chinese and Russian. He went to -- retired and then went  
4 to work for a defense intelligence agency. And he started  
5 selling Chinese folks, intelligence agents, classified  
6 information. He was arrested while he was trying to go to  
7 China to sell some, and he received a sentence of 120 months.

8 Mrs. Toebbe, again, is nothing like that. She was an --

9 THE COURT: What type of classified information was  
10 it?

11 MR. BECK: I'm sorry, Your Honor?

12 THE COURT: What type of classified information was  
13 it?

14 MR. BECK: I do not know, Your Honor.

15 THE COURT: Please continue.

16 MR. BECK: The other point I want to make, Your  
17 Honor, is this. Well, going back to the accomplices. The ones  
18 that we were able to find that we presented to the Court, their  
19 sentences ranged anywhere from 63 to 41 to 12 -- these are the  
20 sentences -- to 81 and 60 months. In each one of those cases,  
21 one could make the argument that the conduct of those  
22 accomplices was even more egregious than Mrs. Toebbe's conduct,  
23 yet they received sentences that are far below what the  
24 projected guideline is in this case.

25 And then lastly, Your Honor, I think it's significant that

1 there is actually a DOD study out there that we found that  
2 looked at prosecution of espionage cases over the years.  
3 That's Table 8 in our memo. And it looked at all kinds of  
4 espionage, but the bulk of it, as we understand it, are the  
5 classic espionage cases. Not the kind where people leak to a  
6 newspaper to get some -- it's a classic espionage like here.  
7 And if you look at the prosecutions in the last -- well, from  
8 1990 to 2015, most of those people, 42 percent of them,  
9 received a sentence of below 5 years. From 1.1 years to 4.9  
10 years. And then if you even -- if you look at people that  
11 received less than 10 years, it's actually 66 percent of the  
12 people received less than 10 years for this crime.

13 So we just ask the Court to consider that in context of the  
14 requirement that the Court take into consideration disparity of  
15 sentencing as part of the equation here along with all the  
16 other factors of course. That a sentence of -- in the  
17 guidelines would be far in excess of what apparently is the  
18 usual sentence in these cases and a sentence that's far in  
19 excess of sentences that are imposed for people that do far  
20 more than Mrs. Toebbe did, even principals.

21 So for all those reasons, Your Honor, we would respectfully  
22 request that the Court impose a sentence consistent with the  
23 bulk of sentences that have been imposed in these cases in the  
24 last -- or at least between 1990 and 2015, and that would put  
25 us in the range of 3 to 4.9 years. Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Beck.

2 Mrs. Toebbe, you have the right to make a statement before  
3 you're sentenced. Do you desire to make a statement?

4 DEFENDANT DIANA TOEBBE: Yes, I do.

5 THE COURT: All right. If you'll come on up to the  
6 podium, please.

7 DEFENDANT DIANA TOEBBE: I made a catastrophic  
8 decision. Initially, I should have followed my instinct and  
9 tried harder to talk my husband out of this plan, but then my  
10 family's difficulties continued, my depression was at an  
11 all-time high, and I felt like the country's political  
12 situation was dire.

13 I didn't just fail to talk him out of it. I actually  
14 participated in helping him, and I wanted him to succeed. At  
15 the time, I absurdly thought it was a way out of these  
16 struggles, but this is inexcusable no matter what my family and  
17 my country or I were going through at the time, and I deeply  
18 regret every minute of it.

19 There are so many things I didn't think of then, but I'm  
20 acutely aware of now. I didn't think through what the impact  
21 of my actions might have been on our servicemen and women. I  
22 was enticed by financial gain and the freedom that might have  
23 come with it, and I ignored the very real harm that I might  
24 have caused to those who fight for the freedom I have or had.

25 I didn't think of my mother and father who did not raise me

1 to act this way, who both taught and fostered my independence  
2 while at the same time, instilling principals in me that I  
3 betrayed. After having spent decades of their lives raising  
4 their children, they're now spending their retirement years  
5 raising a grandchild. I didn't think of my brother and  
6 sister-in-law who, though money is tight, have bent over  
7 backwards to take in my younger son. I am beyond grateful to  
8 all of them and so ashamed that I have made their lives so much  
9 more complicated.

10 I didn't think of my children who have suffered the most in  
11 this situation of my making. I am now unable to provide the  
12 support they need, and however well cared for they are now,  
13 they deserve their mom and dad. Their lives will be forever  
14 marked by the decision I made. There isn't a word for the  
15 regret I feel.

16 My path forward will be rededicated to living life as I  
17 know it should have been lived, to being an honest, hardworking  
18 member of my community, and to being a mother and daughter. I  
19 will continue to seek mental help -- mental health support  
20 through my professionals. I plan to pursue a nursing career  
21 after my period of incarceration as a way of providing --  
22 contributing positively to others in my community. I ask for  
23 the chance to be able to go back to the person I once was and  
24 the person I know I can be again.

25 THE COURT: Thank you, Mrs. Toebbe.

1 Mr. Douglas.

2 MR. DOUGLAS: Thank you, Your Honor.

3 Your Honor, in considering the 3553(a) factors, first of  
4 all, starting with the seriousness of the offense. It's  
5 universally accepted that the person with access, the person  
6 who is trusted, the person who has the specialized knowledge of  
7 the classified information should be punished more severely  
8 than someone who might have helped in some way. For example,  
9 as a lookout.

10 Secondly, as Mr. Beck started to allude to, this will be a  
11 disparity. If the Court sentences Mrs. Toebe to the low end  
12 of this range or even half the low end of this range, it will  
13 be a disparity so the question becomes is there a basis for  
14 such a disparity?

15 THE COURT: Let's back up.

16 MR. DOUGLAS: Yeah.

17 THE COURT: First of all, the lookout.

18 MR. DOUGLAS: Yeah.

19 THE COURT: If you had a defendant who was a lookout  
20 let's say at a bank robbery -- let's say something that's  
21 really bad inside, and there's a real danger to the folks  
22 inside because someone is shot or folks are killed. That  
23 lookout would -- should get a lesser sentence than the person  
24 who went into the bank armed just because a lookout was sitting  
25 in the car waiting for the robber with the gun to come out with

1 the bag of money?

2 MR. DOUGLAS: Completely different situation. This  
3 isn't a drug case. This isn't a bank robbery. This isn't a  
4 murder for hire. This is an espionage case. And so --

5 THE COURT: That put the -- that put this country in  
6 grave danger.

7 MR. DOUGLAS: Correct. However, the point is, as has  
8 been accepted by several courts across this land, acts as  
9 should be punished more severely, period. And it's logical.  
10 The person who had -- it couldn't have been committed without  
11 him.

12 THE COURT: It would have -- his guidelines would  
13 have been more severe or higher than hers had she not  
14 obstructed and not accept -- and failed to accept  
15 responsibility.

16 MR. DOUGLAS: Under the --

17 THE COURT: Right?

18 MR. DOUGLAS: Under the application of the  
19 guidelines, yes.

20 THE COURT: Correct.

21 MR. DOUGLAS: Still, in the government's opinion, she  
22 accepted responsibility and she cooperated. And now she's  
23 facing ten more years for two letters that --

24 THE COURT: You find that laughable?

25 MR. DOUGLAS: -- did not -- did not make it to the

1 defendant --

2 THE COURT: You find that laughable, Mr. Douglas?

3 MR. DOUGLAS: It had no effect.

4 THE COURT: No, my question is, do you find that  
5 laughable?

6 MR. DOUGLAS: I find it to be under the application  
7 of the 3553 factors excessive to go ten years on top of a  
8 sentence for two letters that did not make it to the recipient  
9 and had no effect on the case.

10 There's also a disparity, Your Honor, from some of the  
11 worst cases. The worst cases are human asset, human  
12 intelligence cases where you're literally naming people out  
13 there that are supposed to remain secret and putting their  
14 lives specifically at risk. In fact, Peter Debbins, who got  
15 188 months in such a case; Mariam Thompson recently, 276  
16 months; Jerry Lee, 228 months. These are people who had  
17 access, had been trusted, broke that trust in the worst way in  
18 giving HUMINT assets and putting them at risk.

19 We ask the Court to consider --

20 THE COURT: But that's not the guideline range on the  
21 plea that you've given Mr. Toebbe; right?

22 MR. DOUGLAS: Your Honor, I'm attempting to contrast  
23 what Mrs. Toebbe is facing, the 262 months at the low end --

24 THE COURT: Okay. So not exactly as opposed to her  
25 husband but as opposed to these other defendants who have been



1 sentenced --

2 MR. DOUGLAS: Correct, Your Honor.

3 THE COURT: -- in other courts?

4 MR. DOUGLAS: As opposed to others who had access in  
5 these cases with human intelligence.

6 We ask the Court to consider, again, the cooperation of  
7 this defendant which we've asked multiple times for the Court  
8 to consider. The FBI and the Department of Navy are uniquely  
9 positioned to assess this cooperation, and they're the ones who  
10 benefit from incentivizing cooperation.

11 Your Honor, there is no evidence of a Plan C, full stop.  
12 This was not a fly-by-night investigation conducted by  
13 amateurs. This was the Federal Bureau of Investigation. We're  
14 talking about an entire squad from the FBI Field Office in  
15 Pittsburgh comprised of numerous agents and analysts. They  
16 received support from several field offices across the entire  
17 country, including the Baltimore Field Office, the Washington  
18 Field Office, headquarter support, support from Quantico. They  
19 also had support from the NCIS in this case.

20 It was an extensive investigation. It included three dozen  
21 search warrants across multiple districts. We searched  
22 electronic devices, electronic accounts. We searched their  
23 residence. We searched their vehicles. We searched his Naval  
24 Reactors office. We searched his satellite office on the  
25 campus of the Naval Academy. We also obtained search warrants

1 for location information on their cell phones. We also  
2 obtained a search warrant to place a tracking device on  
3 Mr. Toebbe's vehicle they traveled to and from work. We had  
4 the GPS information on their phones for several months. We had  
5 the tracker on his car for several -- for a couple of weeks.  
6 And there just is no evidence that there was some other  
7 location that he was -- could be storing something.

8 Then we meet with him for over 20 hours, and he gives us  
9 access to his heavily-encrypted laptop. And it's clear from  
10 the review of the laptop, it was the universal laptop that  
11 contained all of the restricted data that he had been  
12 referencing in the letters that he was dropping at the sites.  
13 So there is no evidence that there is some type of Plan C. In  
14 fact, all of the evidence goes against such a conclusion.

15 THE COURT: So are you saying all this not to  
16 complain about the Court's calculation of the guidelines again  
17 but to tell me that you in some way agree with the motion for  
18 variant sentence? Is that where this is going?

19 MR. DOUGLAS: The way I see it, Your Honor, is that I  
20 should make sure the Court hears from the government when it  
21 states its concern about there being a Plan C on I think now  
22 the third occasion. That I should speak to that and because it  
23 does go to -- if the Court is mentioning it multiple times, it  
24 must be considering it important.

25 THE COURT: Yes.

1 MR. DOUGLAS: And I'm just trying to --

2 THE COURT: So you're giving me a full disclosure on  
3 what you believe the facts are?

4 MR. DOUGLAS: Yes, Your Honor.

5 THE COURT: Okay. I appreciate that.

6 MR. DOUGLAS: So that the concern should not be as  
7 high as the Court has stated in considering the 3553(a)  
8 factors.

9 Ultimately, Your Honor, the government is not going to give  
10 a new recommendation. It stands by its previous  
11 recommendation, but it does believe that this should not --  
12 this is not a case for such a disparity.

13 THE COURT: So the government is opposing the motion  
14 for variant sentence --

15 MR. DOUGLAS: No.

16 THE COURT: -- and asking me to sentence this  
17 defendant to the low -- to the low end of the applicable  
18 guideline which is the heart of the plea agreement in this --  
19 is we start at the low end of the guideline, 262, because the  
20 agreement was no higher than the applicable low end. So I'm  
21 not certain I understand what you're saying. Are you saying  
22 that you're asking the Court to impose a sentence of 262 or are  
23 you asking the Court in joining in the defendant's motion for  
24 variant sentence that you suggest a different number?

25 MR. DOUGLAS: The government is taking no further

1 position than it did in the August 16th sentencing hearing  
2 where the three years was on the table.

3 THE COURT: So the government is asking me to grant  
4 the motion for variant sentence and not sentence this defendant  
5 to any more than 36 months, 3 years?

6 MR. DOUGLAS: Yes, Your Honor.

7 THE COURT: Why would I do that when that's the very  
8 heart of the basis for why I rejected the plea agreement  
9 itself, the original plea agreement, in Ms. Toebbe's case?

10 MR. DOUGLAS: For all the reasons we've previously  
11 stated, Your Honor.

12 THE COURT: Okay. Recite them again.

13 MR. DOUGLAS: The seriousness of the offense. She is  
14 not the person with access. The disparity that this would  
15 create for someone who was simply a lookout on two or three  
16 occasions, because of her cooperation, because there is no  
17 concern about there being a Plan C. And for all those reasons  
18 under 3553(a), this should not be a sentence anywhere near 262  
19 months.

20 THE COURT: And you're asking me to sentence her to 3  
21 years, 36 months?

22 MR. DOUGLAS: Yes, Your Honor.

23 THE COURT: Thank you, Mr. Douglas.

24 MR. DOUGLAS: Thank you, Your Honor.

25 THE COURT: We're going to take a break while I

1 further consider the arguments I've heard at disposition, and  
2 then we'll get back here as soon as I have reached a decision,  
3 counsel, to place the ruling upon the record and impose  
4 sentence.

5 (Recess 1:00 P.M. - 1:45 P.M.)

6 THE COURT: Please be seated, everyone. We're back  
7 on the record. The defendants and their counsel are here  
8 present.

9 Counsel, anything further for me to consider before I  
10 impose sentence?

11 MR. DOUGLAS: Not by the government, Your Honor.

12 MR. BECK: Not from Mrs. Toebbe, Your Honor.

13 THE COURT: All right. Ms. Toebbe, please stand.

14 Pursuant to the Sentencing Reform Act of 1984, it's the  
15 judgment of this Court that the defendant, Diana Toebbe, is  
16 hereby committed to the custody of the Bureau of Prisons to be  
17 imprisoned for a term of 262 months. You may have a seat.

18 The Court makes the following recommendations to the Bureau  
19 of Prisons: That the defendant be incarcerated at an FCI or  
20 facility as close to San Diego, California, as possible; that  
21 she be incarcerated at a facility where she can participate in  
22 substance abuse treatment as determined by the Bureau of  
23 Prisons; that she be incarcerated at a facility where she can  
24 participate in the 500-Hour Residential Drug Abuse Treatment  
25 Program; that she be incarcerated at a facility where she can

1 participate in mental health treatment as determined by the  
2 Bureau of Prisons; that the defendant be given credit for time  
3 served since October 9, 2021.

4 Pursuant to 42 U.S.C. § 14135a, the defendant shall submit  
5 to DNA collection while incarcerated in the Bureau of Prisons  
6 or at the direction of the probation officer. Upon release  
7 from imprisonment, Ms. Toebbe, you shall be placed on  
8 supervised release for a term of three years.

9 You must comply with the standard conditions that have been  
10 adopted by this Court in its November 29, 2016, standing order  
11 as well as the following special conditions: You must  
12 participate in a mental health treatment program and follow the  
13 rules and regulations of that program. The probation officer  
14 in consultation with the treatment provider will supervise your  
15 participation in the program. That includes the provider, the  
16 location, the modality, the duration, the intensity, et cetera.

17 You must participate in a substance abuse treatment  
18 program. The probation officer will supervise your  
19 participation in that program, meaning supervising the  
20 provider, the location, the modality, the duration, and the  
21 intensity. You must submit to substance abuse testing to  
22 determine if you used a prohibited substance, and you must not  
23 attempt to obstruct or tamper with the testing methods. All of  
24 these conditions assist probation in identifying treatment  
25 needs, providing rehabilitation services, reducing the risk of

1 recidivism, and provide for protection of the community.

2       You must not use or possess alcohol. This condition  
3 assists probation in reducing the risk of recidivism and  
4 provides for protection of the community.

5       You must provide the probation officer with access to any  
6 requested financial information and authorize the release of  
7 any financial information. The probation officer may share  
8 financial information with the U.S. Attorney's Office. This  
9 condition assists the probation office in legitimizing  
10 defendant's employment and/or income, provides protection for  
11 the community, and aids in the maximum collection of financial  
12 penalties.

13       You must not engage in an occupation, business, profession,  
14 or volunteer activity that would require or enable you to have  
15 access to classified government information without prior  
16 approval of the Court. Unless excused for legitimate reasons,  
17 if not in compliance with the condition of supervision  
18 requiring full-time employment at a lawful occupation, you may  
19 be required to perform up to 20 hours of community service per  
20 week until employed as approved or directed by the probation  
21 officer. This condition assists probation in reducing the risk  
22 of recidivism and provides for protection of the community.

23       You must consent to a third-party disclosure to your  
24 employer in regard to your convictions. This condition will  
25 assist probation in monitoring defendant's compliance with the

1 conditions of supervision, providing for protection of the  
2 community, and reducing the risk of recidivism.

3 It's further ordered you pay the United States a \$100  
4 special assessment fee as to Count 1 which I note has been paid  
5 in full. It's further ordered that you shall pay a fine in the  
6 amount of \$50,000. This takes into account the fact that the  
7 Court cannot order restitution to recover the remaining  
8 basically \$45,700 of earnest money that had not been recovered  
9 by the government.

10 Additionally, the defendant agrees to forfeit and abandon  
11 to the United States all of her right, title, and interest in  
12 the following items that the defendant agrees constitute money,  
13 property, and/or assets derived from or obtained by the  
14 defendant as a result of or used to facilitate the commission  
15 of her illegal activities. Those are all papers, digital  
16 media, electronic devices seized from her residence, her  
17 vehicles, and Mr. Toebbe's Naval Reactor's offices in  
18 October 2021.

19 Before I get into the specifics for the reasons for this  
20 sentence imposed -- and I will say in imposing this sentence,  
21 in determining what the proper sentence to be imposed was, I  
22 did consider all those factors set forth in 18 U.S.C.  
23 § 3553(a).

24 I did consider the arguments of defense counsel and the  
25 government to support the defendant's motion for variant



1 sentence in this case. The defendant asking for the Court to  
2 vary downward to a sentence of 3 to 4.9 years and the  
3 government asking the Court to vary downward to a sentence of  
4 3 years.

5 Now, while the factors listed in mitigation by the  
6 government and the defendant do impact the Court's sentencing  
7 and did impact the Court's sentence in imposing the low end of  
8 the applicable guideline range, the 262 months, and it also  
9 factored in, in part, to my consideration of whether to accept  
10 the plea -- the binding plea agreement in the first place, I  
11 find these factors do not support a variant sentence for the  
12 reasons that I'm going to place upon the record for this  
13 sentence I imposed.

14 I also in denying the motion for variant sentence point out  
15 that the 36 months is a big part of why I denied and did not  
16 accept the original binding plea to 36 months in Ms. Toebbe's  
17 case, and I incorporate all of my prior rulings at that  
18 proceeding -- the one where I rejected the original binding  
19 plea -- as further support and reasoning for rejecting and  
20 denying the motion for variant sentence that was made today by  
21 the government and the defendant.

22 I'll point out that this is not your usual case. Everyone  
23 has recognized this. These are not your usual defendants. And  
24 this type of case is certainly not the usual nature of cases we  
25 see in this courtroom in the Northern District of

1 West Virginia. I look at every defendant in every case from  
2 the smallest crime to the largest crime which I think with this  
3 crime has hit the top of those we've seen in this courtroom or  
4 at least I've seen. I view the cases as unique, the offenses  
5 as to these defendants unique, and the defendant's unique  
6 characteristics and all those other considerations I must  
7 consider under 18 U.S.C. § 3553(a).

8 In looking at parity or disparity between other espionage  
9 cases where defendants were sentenced and this case, I'll note  
10 there aren't a lot of them. And each -- the facts of each of  
11 those cases are very different, and the defendants are very  
12 different as well. For example, it wasn't in the table that  
13 was provided by defense counsel, but Mr. Beck mentioned Ron  
14 Hansen. So we took a look in the back. There was a DOJ press  
15 release on that case, and this is the information I believe in  
16 that press release that sets that case apart from this case.  
17 This is a defendant from Utah. He was 60 years old at the time  
18 he was sentenced. He admitted he solicited national security  
19 information from an intelligence case officer working for the  
20 DIA. The documents he received were classified. Those  
21 documents included national security information related to  
22 U.S. military readiness in a particular region.

23 What the information that Mr. Toebe wanted to provide was  
24 related to military readiness anywhere in the world where those  
25 submarines would be. This was information closely held by the

1 federal government in Mr. Hanson's case as well though. Hanson  
2 did not pose a security clearance -- did not possess a security  
3 clearance, and he didn't possess the need to know the  
4 information contained in his materials.

5 I also looked at Table 8, and I appreciate it. It was  
6 helpful to look at those cases. I looked at Table 8 that  
7 Mr. Beck referenced, and I did see the initial prison sentences  
8 and years that were set forth and the number of individuals  
9 that -- granted, and we all agree, there aren't a lot of these  
10 espionage cases. But I went to the low end, but also on the  
11 high end, there were 21 cases according to my math that  
12 resulted in life sentences. So, obviously, some judges did  
13 deem the sentences that needed to be imposed in those cases  
14 even higher than what was before the Court in this case.

15 As we noted, every case is unique before the Court and  
16 every defendant is unique, and I considered that, but they do  
17 share some similarities. For example, when we look at whether  
18 lookouts are less culpable than the principal in the case, and  
19 we look at that in the context of an offense that charges  
20 conduct that had the potential for harm, physical harm to come  
21 to individuals. We often see a robbery case, for example, an  
22 armed robbery, where the armed robber goes into the bank, and  
23 there are individuals who are placed at risk, risk of their  
24 lives or at least risk of injury, and we've got a lookout  
25 outside. That's a limited number of people in that bank. If

1 we zoom out from that small view in a bank during an armed  
2 robbery to the lookout situation in this case where we had the  
3 potential for harm to U.S. soldiers, the military, civilians --  
4 not in one location, not a small number of people, but in this  
5 country, across the world, that's a huge lens, and that's the  
6 lens that I used to, in part, impose a sentence that I impose  
7 today.

8 In looking at the specific reasons for the sentence imposed  
9 here today, aside from what I've already mentioned, the  
10 defendant's conduct in this case was very serious in nature as  
11 evidenced by the substantial penalties associated with her  
12 conviction. Her actions posed a legitimate concern for the  
13 national security interests of this country.

14 Her activities had the potential to undermine countless  
15 hours of effort made by an untold number of individuals and  
16 service to the U.S. and could have endangered military service  
17 personnel and compromised the security of military assets.  
18 This conduct at a minimum spanned a period of many months. The  
19 scheme required substantial preplanning and considerable  
20 efforts were undertaken to avoid detection and disruption. The  
21 defendant was an acknowledged co-conspirator and committed  
22 partner to this endeavor. She was not a minor participant.

23 She, by her own acknowledgement, knew of the scope of the  
24 conspiracy. She was aware of the special relationship her  
25 husband had established with an entity he believed to be a

1 foreign government. She was positioned to benefit jointly in  
2 the illicit proceeds of the unauthorized distribution of the  
3 restricted data. While the defendant didn't have access to the  
4 restricted data at its source within the United States Navy,  
5 she did have access to it after it was removed from its proper  
6 place by her husband.

7 Indeed the defendant participated directly in the  
8 distribution by accompanying her husband to drop deads -- dead  
9 drops in order to transfer the restricted data and by acting as  
10 a lookout.

11 The defendant's involvement in the offense conduct appears  
12 to have been motivated largely by greed, financial gain. She  
13 was not coerced into engaging in this conduct. And, quite  
14 frankly, in looking at the communication between the  
15 codefendants in this case when I was preparing to rule upon  
16 Ms. Toebbe's appeal of the MJ -- the magistrate judge's bond  
17 decision in this case and the intercepted communication between  
18 Mr. Toebbe at the jail -- well, actually not between the  
19 intercepted communication that Mrs. Toebbe was trying to get to  
20 Mr. Toebbe at the jail, pretending to spin that cover story,  
21 trying to get him to perjure himself, to say she wasn't  
22 culpable, to indicate that he was the one that was driving the  
23 bus, and she was basically a bystander or innocent, it's clear  
24 to this Court that it was most probably Mrs. Toebbe that was  
25 driving the bus. While Mr. Toebbe had the access to the

1 information, she was a big part of the plan. Not only in  
2 carrying out the plan but also in the coverup story.

3 She was directing the furtherance of this conspiracy  
4 through those letters that were intercepted. She was telling  
5 Mr. Toebbe in those letters basically to deploy the plan. To  
6 tell the truth is what she called it; but even she knew, and he  
7 certainly knew, that she didn't want him to tell the truth.  
8 She wanted him to lie.

9 At the time of the offense, Mrs. Toebbe had positive family  
10 ties. She possessed an advanced education. I think she's kind  
11 of referred to here in court today by counsel as, you know,  
12 housewife, teacher, but she had an advanced education, and she  
13 was gainfully employed.

14 The defendant made a deliberate and calculated choice to  
15 act in pursuit of her own interests. She disregarded the risks  
16 to her family, her children, and her nation in doing so. And  
17 she's now confronted with the consequences unfortunately of  
18 those choices. In considering even at a basic level whether to  
19 accept the binding plea in this case, I compared the  
20 defendant's exposure, worst case scenario if she went to trial  
21 and was convicted on all three counts, to the guideline  
22 calculations pursuant to the plea agreement. Because the  
23 counts would be grouped for guideline calculations and the  
24 Court would run them, as I would -- as is suggested in the  
25 guidelines, concurrently, unless there's some exceptional

1 circumstance, there is no difference between the guideline  
2 calculations if Mrs. Toebe had gone to trial and been  
3 convicted on all three counts and if the Court accepted the  
4 binding plea under the guideline calculations, which I found to  
5 be appropriate and applicable in this case.

6 But aside from that, I also considered the following: The  
7 uncertainty of obtaining a conviction at trial; whether the  
8 government's hard sell on the variance in this case here today  
9 and the first binding plea may be an indication of perhaps a  
10 hesitancy to try this case because perhaps there's some defect  
11 in this case that we're unaware of; the costs and time of a  
12 trial to the government and the defense; the lengthy sentences  
13 and length of sentences imposed in other espionage cases as  
14 I've previously commented on, both those at the low end and  
15 those at the high end; the potential of leaks that could come  
16 from a trial and further harm our nation's security; and the  
17 time and distance between the sentence imposed today and the  
18 time the defendant would potentially be able to distribute any  
19 information she or her husband held onto when she was released  
20 from incarceration.

21 Looking at the length of this sentence and given likely  
22 technological and military advances, by the time this defendant  
23 is released from imprisonment, any information she has would  
24 most certainly be outdated, stale, and worthless to any nation  
25 who would want to cause us harm.

1        Finally, I considered the -- not only the original letter  
2        from Admiral Houston that was the victim impact statement but  
3        the one that I received after the second plea agreement was  
4        made. It was a supplemental victim impact statement, and he  
5        told me that on behalf of the Navy, the Navy supported both  
6        plea agreements in this case. He stated that the plea  
7        agreement further accomplishes final resolution of the cases  
8        with -- and this was important to me -- with no further risks  
9        to national security.

10       But he made a point to add in that supplemental victim  
11       impact statement, as explained in Reference A, meaning the  
12       original victim impact statement, the betrayal by the Toebbes  
13       has had far-reaching consequences for the United States and the  
14       sailors and the families who serve the United States Navy.

15       Based on defendant's involvement in the instant offense,  
16       her personal history and characteristics, her lack of prior  
17       criminal history, her conduct in this case both during the  
18       course of the offense before she was incarcerated and  
19       throughout her incarceration at the jail, and considering the  
20       great impact her actions have had on this nation's security  
21       and, in fact, the security of the world in these times that we  
22       sit in today most especially, the defendant received a sentence  
23       of 262 months' imprisonment. This term of incarceration  
24       reflects the very serious nature of this offense and will hold  
25       the defendant accountable for her actions.



1 Overall, this sentence meets the sentencing objectives of  
2 punishment, general deterrence, incapacitation, and  
3 rehabilitation. The three-year term of supervised release will  
4 allow the probation office to monitor defendant's conduct in  
5 the community following her release from incarceration and  
6 hopefully assist her in returning to a law-abiding lifestyle.

7 I'll dismiss the remaining counts of the indictment upon  
8 motion of the government which should be two and three.

9 MR. DOUGLAS: So moved, Your Honor.

10 THE COURT: Granted. And I ask the probation officer  
11 to prepare the judgment and commitment order.

12 Mrs. Toebbe, although a defendant who has pled guilty has  
13 the right to appeal from the judgment of this Court, a  
14 defendant who has pled guilty may waive that right as part of a  
15 plea agreement. You entered into a plea agreement which waived  
16 in whole or in part your right to appeal your sentence. Those  
17 types of waivers are generally enforceable, and it appears as  
18 though it's enforceable in your case. However, if you believe  
19 the waiver in your plea agreement is somehow unenforceable, or  
20 you believe your guilty plea was somehow unlawful or  
21 involuntary, or you believe there's some other defect in these  
22 proceedings you didn't waive by your guilty plea, then you can  
23 present that theory to the appellate court.

24 However, if you decide to appeal, you must file a notice of  
25 appeal within 14 days following entry of the judgment and

1 commitment order. If you request, the clerk of court will  
2 forthwith file a notice of appeal on your behalf. And if you  
3 desire counsel on appeal, and you can't afford a lawyer, the  
4 appropriate court will review your financial affidavit to  
5 determine your eligibility for court-appointed counsel.

6 Anything further on behalf of the government?

7 MR. DOUGLAS: No, Your Honor. Thank you.

8 THE COURT: Anything further on behalf of your  
9 client, Mr. Beck?

10 MR. BECK: No, Your Honor.

11 THE COURT: All right. Does your client wish to be  
12 remanded to the custody of the marshals now and go back to  
13 holding or would she prefer to stay here for Mr. Toebbe's  
14 proceeding?

15 MR. BECK: She would like to stay if that's an  
16 option, Your Honor.

17 THE COURT: That's an option.

18 MR. BECK: She would like to stay.

19 THE COURT: All right. Counsel, do you need a break  
20 before we go into Mr. Toebbe's case or should we keep on going?

21 MR. COMPTON: I'm fine to proceed, Your Honor, as is  
22 the defendant.

23 THE COURT: Okay. No one needs a comfort break? I'm  
24 sorry, Mr. Douglas. I cut you off.

25 MR. DOUGLAS: No, the government is prepared to

1 proceed as well.

2 THE COURT: Okay. We already have Mr. Toebe under  
3 oath; correct?

4 THE CLERK: Correct.

5 THE COURT: All right. Mr. Compton, I'll turn to you  
6 then. Have you received the presentence investigation report  
7 and gone over it with your client?

8 MR. COMPTON: Yes, Your Honor.

9 THE COURT: And, Mr. Toebe, most importantly, have  
10 you received that revised presentence investigation report and  
11 reviewed it to your satisfaction with your lawyer?

12 DEFENDANT JONATHAN TOEBBE: Yes, Your Honor.

13 THE COURT: Mr. Douglas, has the government received  
14 and reviewed it?

15 MR. DOUGLAS: Yes, Your Honor.

16 THE COURT: All right. I think we have to take a  
17 look at the objections, do we not, counsel?

18 MR. COMPTON: Your Honor, I can hopefully speed this  
19 along. Objections 1, 2, 3, 4 have been resolved to our  
20 satisfaction and --

21 THE COURT: Is six moot now because of the nature of  
22 the binding plea or not? I skipped over five.

23 MR. COMPTON: It is, Your Honor. That was my very  
24 next statement --

25 THE COURT: Okay. I'm sorry. I cut you off.

1 MR. COMPTON: No. No, Your Honor --

2 THE COURT: Okay.

3 MR. COMPTON: My very next statement, Objection 6 is  
4 also moot and withdrawn because of the binding term of the  
5 plea, and we are not asking for a variant sentence. That just  
6 leaves us with Objection No. 5. It's very minor, and it's  
7 really only half of Objection 5.

8 THE COURT: The first paragraph is gone of your  
9 objection -- right? -- and we're only dealing with the terms of  
10 the supervised release?

11 MR. COMPTON: Yes, Your Honor, and it's --

12 THE COURT: Okay.

13 MR. COMPTON: Again, it's just a very minor -- and I  
14 noted that the Court imposed the exact same condition when  
15 sentencing Mrs. Toebe. I just had a concern about the  
16 condition at paragraph 224 where it says --

17 THE COURT: Let me turn to that real quick --

18 MR. COMPTON: Yes, ma'am.

19 THE COURT: -- because I had made some notes. Hold  
20 on. Okay. I'm with you. As it reads now, "You must not  
21 engage in any occupation, business, profession, or volunteer  
22 activity that would require or enable you to have access to  
23 classified government information without the prior approval of  
24 the Court."

25 And you suggest a tweak to that?

1 MR. COMPTON: Well, I'm just not sure it's necessary,  
2 Your Honor. I don't know -- the access to classified  
3 information is determined and granted by the executive branch.  
4 Mr. Toebbe is about to be convicted of a felony offense which I  
5 believe by its terms disqualifies him from having access to  
6 classified information. And so I don't know of a scenario in  
7 which the defendant would be in a position to have access to  
8 classified information or where the Court would be in a  
9 position to approve or disapprove of the defendant having  
10 access to classified information. It seems to be a -- sort of  
11 a -- an over -- I don't want -- it's not -- overreach is not  
12 the right word, but it's -- and neither is piling on, but it's  
13 more of a -- it's just not necessary. It's --

14 THE COURT: Well, how would it hinder him in any  
15 future employment once he's released from incarceration?

16 MR. COMPTON: I don't think it would injure him, Your  
17 Honor, but I --

18 THE COURT: Or hinder him I think was my word.

19 MR. COMPTON: I'm sorry?

20 THE COURT: How would it hinder him? H-I-N-D-E-R.

21 MR. COMPTON: Oh, hinder. Well, I don't think it  
22 would, Your Honor, but I don't think that that is the analysis  
23 when we're looking at what conditions are to be imposed on  
24 supervised release.

25 THE COURT: I agree. But here's the way I look at

1 it, and I'm not terribly tech savvy, but let's -- I know he's  
2 forever foreclosed based upon his conviction and his actions  
3 from working in the capacity he had been working for the  
4 government and to officially have access to any sort of  
5 classified information. But I can't think of, specifically,  
6 the situation in which it would arise, but let's say he's  
7 working for the IT department somewhere, and he somehow is able  
8 to gain access to classified information. I just -- I just  
9 would like to err on the side of caution as opposed to just  
10 removing this totally.

11 MR. COMPTON: Perhaps sort of in the vein of -- was  
12 it Henshaw where we were tweaking the condition that -- I  
13 believe it started out by saying the defendant shall not, and I  
14 think we tweaked it to say that the defendant -- the  
15 employment -- the defendant can, you know, seek employment  
16 subject to the approval of the probation office. The probation  
17 office shall approve employment unless it appears to the  
18 probation office that there is some impact to national security  
19 or some association with classified information.

20 I don't -- I'm a little -- I'm having a little trouble  
21 trying to say how to phrase it because I just don't -- I don't  
22 think that -- I don't think there's a scenario where it would  
23 come up where the defendant -- again, not like the scenario  
24 where we're talking about someone involved in perhaps a child  
25 exploitation who might, you know, be in a position where they

1 could get a job as a delivery person which might raise some  
2 questions with the probation office. I just don't think  
3 there's a scenario here where Mr. Toebbe would come to the  
4 probation office and say, hey, I just got a job at the nuclear  
5 lab down in Oak Ridge. Can you -- what do you -- is it okay?  
6 I don't see that as being a scenario so I'm having a little  
7 trouble trying to phrase it.

8 THE COURT: So basically what you suggest in trying  
9 to think of how to rephrase it is to modify this to state that  
10 the defendant must seek approval of probation before he begins  
11 any new employment and that probation must approve the  
12 employment unless it would require or enable the defendant to  
13 have access to classified government information.

14 MR. COMPTON: I would be satisfied with that, Your  
15 Honor. I think that the -- I think the probation office is  
16 required to approve employment by standard conditions. That  
17 provides the probation office or that directs the probation  
18 office to approve employment unless it would have some impact  
19 on national security issues or classified information issues.  
20 If it does and there's no approval, I think that would, at that  
21 point, trigger Mr. Toebbe to be able to come to the Court and  
22 seek approval through the Court if he wishes to continue down  
23 that line.

24 THE COURT: Okay. Mr. Douglas?

25 MR. DOUGLAS: No objection, Your Honor.

1           THE COURT: All right. What's fair to Mr. Toebbe is  
2 fair to Mrs. Toebbe so I'm -- while we have her and her counsel  
3 here, I'm going to make a change to those conditions in her  
4 case, and it will be consistent with what my ruling is going to  
5 be on this objection. That the defendant -- and this is how it  
6 will be in Mr. Toebbe's case as well. The defendant must seek  
7 approval -- well, let's back up. The defendant must advise  
8 probation before beginning any occupation, business,  
9 profession, or volunteer activity as to what that occupation,  
10 business, profession, or volunteer activity is; and probation  
11 must approve the occupation, business, profession, or volunteer  
12 activity unless it would require or enable the defendant to  
13 have access to classified government information. How is that?

14           MR. COMPTON: No objection, Your Honor.

15           MR. DOUGLAS: No objection, Your Honor.

16           THE COURT: All right. Mr. Beck?

17           MR. BECK: Your Honor, no objection. And may I just  
18 make one other point? Ms. Toebbe brought up to me after you  
19 imposed the sentence that because of the location of one of her  
20 children, if the Court could make a recommendation that the BOP  
21 place her as close as possible to Annapolis. Not San Diego.

22           THE COURT: Where are her children?

23           MR. BECK: Her oldest child is in school near  
24 Annapolis, Your Honor, and she believes that being closer to  
25 that child would be best for their family. If the Court would



1 be agreeable to recommend that instead of San Diego, she would  
2 ask the Court to do that as well.

3 THE COURT: So the oldest one right now is how old?

4 MR. BECK: Sixteen, Your Honor.

5 THE COURT: And that child is in Annapolis. How much  
6 further to go in school?

7 MR. BECK: Two more years of high school, Your Honor,  
8 and then I --

9 THE COURT: Okay. And then college is up in the air.  
10 Right. And then the younger child is in San Diego?

11 MR. BECK: Santa Cruz with --

12 THE COURT: Santa Cruz.

13 MR. BECK: Santa Cruz with her brother, Your Honor.

14 THE COURT: And how old is that child?

15 MR. BECK: Twelve, Your Honor.

16 THE COURT: Twelve. And it's your preference,  
17 Ms. Toebbe, for me to make a recommendation to the Bureau of  
18 Prisons that you be here -- well, you be housed in a federal  
19 facility as close to Annapolis, Maryland, as possible to be  
20 closer to your older 16 year old?

21 DEFENDANT DIANA TOEBBE: Yes, ma'am.

22 THE COURT: Okay. Then I'm going to change the  
23 recommendation I made in that case to the Bureau of Prisons,  
24 and it's my recommendation that Ms. Toebbe be housed at a  
25 federal facility as close to Annapolis, Maryland, as possible.

1 MR. BECK: Thank you, Your Honor.

2 THE COURT: Does that satisfy your request?

3 MR. BECK: Yes, Your Honor. Thank you.

4 THE COURT: Sorry, Mr. Compton. I think that  
5 concludes any objections you had to the PSR?

6 MR. COMPTON: That's correct, Your Honor.

7 THE COURT: All right. Nothing from the  
8 government?

9 MR. DOUGLAS: No, Your Honor.

10 THE COURT: Okay. Then with the change made to the  
11 employment condition, the PSR is accepted and ordered filed,  
12 and made a part of the record herein. With that minor  
13 revision, it'll be placed in the record under seal.

14 I will note for the record that on September 27, 2022, this  
15 defendant appeared in the United States Magistrate Court for  
16 the Northern District of West Virginia sitting in Martinsburg.  
17 And at that time, he tendered a plea of guilty by a written  
18 plea agreement to Count 1 of the indictment charging conspiracy  
19 to communicate restricted data. After consideration, the Court  
20 accepted the defendant's plea of guilty to the crime charged in  
21 Count 1 and deferred acceptance of the plea agreement and  
22 adjudging the defendant guilty.

23 Subsequent to acceptance of the guilty plea, a presentence  
24 investigation report was ordered. Having now received that  
25 report and ruled upon any factual and legal issues raised

1   thereby, I find the charge to which Mr. Toebe is pleading  
2   adequately reflects the seriousness of the offense behavior. I  
3   also find acceptance of the plea agreement won't undermine the  
4   statutory purposes of sentencing which are deterrence,  
5   incapacitation, just punishment, and rehabilitation.

6       So at this time, Mr. Toebe, I accept your plea agreement  
7   and your plea of guilty, and you now stand convicted of the  
8   offense to which you agreed to plead guilty under your  
9   agreement with the government.

10       I'll now announce my tentative findings as to the  
11   applicable guidelines. We start in this case with a base  
12   offense level of 37 pursuant to Guideline 2M3.1(a)(2) because  
13   the offense involved the communication of restricted data that  
14   was classified at the confidential level. Then there's a  
15   two-level adjustment for offense in the role. The defendant  
16   abused a position of public trust and used a special skill in a  
17   manner that significantly facilitated the condition or  
18   concealment of the offense. Therefore, the offense level is  
19   increased by two levels pursuant to Guideline 3B1.3. That  
20   brings us to an adjusted offense level of 39.

21       Following that, there's a two-level reduction for  
22   acceptance of responsibility under Guideline 3E1.1(a), and upon  
23   motion of the government, there will be an additional one-level  
24   reduction under Guideline 3E1.1(b).

25               MR. DOUGLAS: So moved, Your Honor.

1           THE COURT:   Granted.   We arrive then at a total  
2 offense level of 36.   Defendant has a criminal history category  
3 of one based upon zero points.   With a total offense level of  
4 36 and a criminal history category of 1, the guidelines  
5 recommend imprisonment in the range of 188 to 235 months.   The  
6 guidelines indicate that probation is -- the defendant is not  
7 eligible for probation.   The guidelines recommend two to five  
8 years of supervised release, a fine in the range of 40,000 to  
9 \$100,000, and there's a special assessment fee in the amount of  
10 \$100 owed on that one felony count of conviction.

11           The cost of imprisonment is \$3,688 per month, the cost of  
12 community confinement is \$2,980 per month, and the cost of  
13 supervision is \$371 per month.

14           Are there any legal objections to the tentative guideline  
15 findings, counsel?

16           MR. DOUGLAS:   Not by the government, Your Honor.

17           MR. COMPTON:   No, Your Honor.

18           THE COURT:   Then the guidelines as announced will be  
19 the advisory guidelines applicable to sentencing in this  
20 matter.

21           Mr. Compton, I will hear from you now for a statement on  
22 your client's behalf.   I will tell you I've reviewed the  
23 sentencing memorandum and its supplemental sentencing  
24 memorandum in particular.

25           MR. COMPTON:   Thank you, Your Honor.   Your Honor, I

1 also have received this after I filed those, a letter written  
2 on Mr. Toebbe's behalf by -- it's actually by an inmate of the  
3 Eastern Regional Jail who is in protective custody with  
4 Mr. Toebbe. I have marked it as Defendant's Exhibit 1 for  
5 identification. I provided a copy to Mr. Douglas. I would ask  
6 that this be admitted for the Court's consideration. It's one  
7 page and a couple of lines on the top.

8 THE COURT: A lot of firsts for the Court today. The  
9 government recommending a variant sentence lower than that  
10 requested by the defendant, an inmate with a character  
11 reference for the defendant --

12 MR. COMPTON: Well, I would like the Court to read  
13 the letter, and then perhaps we can discuss it because I think  
14 it -- I think it maybe talks more about Mr. Toebbe than --

15 THE COURT: Okay. And you've seen it, Mr. Douglas?

16 MR. DOUGLAS: Yes, Your Honor, I have.

17 THE COURT: Any objection to my reviewing it?

18 MR. DOUGLAS: No, Your Honor.

19 THE COURT: Okay. Give me a moment.

20 So is this Stacey Taylor a male or a female?

21 MR. COMPTON: It's a male, Your Honor.

22 THE COURT: Okay. All right. I reviewed it. We  
23 will file it as part of the record in today's proceeding, but  
24 I'm going to hang onto this, Chad. I may refer to it during  
25 sentencing but make sure I get it back to you.

1           MR. COMPTON: Thank you, Your Honor, and good  
2 afternoon. I know a lot has been said already today in this  
3 case. Since I gave the Court this letter, I might as well just  
4 start with it. You know, Mr. Toebe is in protective custody  
5 because of the nature of the charges and what's, you know,  
6 taken place over the course of the case. So he presented this  
7 letter to me, and it was from this Stacey Taylor, who I don't  
8 know anything about, but I do know that he's in the same  
9 protective custody as Mr. Toebe so that prompted me to ask,  
10 well, what is Stacey Taylor in protective custody for?

11           THE COURT: Did you ask the jail or did you ask your  
12 client because --

13           MR. COMPTON: I --

14           THE COURT: -- sometimes they're not honest. Not  
15 meaning your client but folks who are in protective custody.

16           MR. COMPTON: Well, I did ask. I asked my client,  
17 Your Honor, and he was honest with me because he could have  
18 told me something that was more palatable than being in there  
19 for child exploitation which is what Mr. Taylor is in there  
20 for. And not a good thing. Awful. And Mr. Taylor, whether  
21 he's, you know, guilty or not, I don't -- I believe he's  
22 awaiting trial in this case. It's a person nonetheless, as is  
23 Mr. Toebe, who over the course of this case and in the media  
24 and by lots of folks has been, you know, hit with that traitor  
25 label which is never anything that you want to go around

1 through life with. But I thought this letter was interesting  
2 and helpful to me because what it shows to me at least is we  
3 got somebody like Mr. Taylor, guilty or not -- but let's  
4 presume he is guilty of the worst kind of crime -- down at the  
5 Eastern Regional Jail. He's doing his time, whatever, and he  
6 comes across somebody like Mr. Toebbe. And Mr. Toebbe, maybe  
7 because he's in the same type of situation, maybe because he --  
8 I don't know what reason, but I tend to think that it's because  
9 of the kind of person that Mr. Toebbe is. Is that he doesn't  
10 sit there and look at Mr. Taylor and say, "You're some kind of  
11 child molester. Stay away from me. Get away from me. You're  
12 not even worth me hanging around."

13 Mr. Toebbe has done what he could because he has the  
14 education, because he has the smarts, because he's not like the  
15 typical inmate at the ERJ. To do what he can to help this man.  
16 Now, he's not trying to help him, you know, get out of whatever  
17 trouble he's in. He's not trying to help him, you know, beat  
18 the rap.

19 THE COURT: He's not doing his legal work for him.

20 MR. COMPTON: He's not doing his legal work for him.  
21 I don't think Mr. Toebbe -- Mr. Toebbe is a physicist, but he's  
22 not a lawyer. I don't know that Mr. Toebbe could do my job,  
23 and I certainly, certainly couldn't do his. What he is doing  
24 is helping Mr. Taylor where he can. GED classes, math  
25 homework, being a human being to somebody who maybe doesn't

1 have a lot of human beings around him so to speak.

2 So I just wanted to bring that to this Court's attention,  
3 and I think that sort of folds into the first thing I wanted to  
4 mention which has been mentioned a lot I think today and all of  
5 the filings that we made with the Court. And that's what I  
6 will refer to as Mr. Toebbe's post-offense rehabilitative  
7 conduct. His compliance with paragraph 7 of his plea  
8 agreement. It's been nothing but phenomenal. I don't know how  
9 else to describe it.

10 I think the government has described it in similar terms.  
11 He has done everything that he can to -- in any way that he  
12 can -- try and make right or atone in some small way for what  
13 he has done. Not only with regard to his -- the specific case  
14 that we are here for today but with regard to information that  
15 the government didn't even know about. He has done phenomenal,  
16 phenomenal work in trying to atone for what he has done. And I  
17 think -- I don't know how more to express how much I think the  
18 Court should give weight to that.

19 I know the government has multiple times here today and I  
20 know the vice admiral has in their letter talked about how much  
21 Mr. Toebbe has done. He's done that for several reasons. He's  
22 done it to atone for what he has done. He's truly sorry. He  
23 is truly sorry. And he's done it because -- and I -- and I've  
24 spent now over a year with Mr. Toebbe. Despite what he did, I  
25 believe -- and I feel confident standing before the Court in



1 saying this -- that I believe Mr. Toebbe truly loves his  
2 country. I believe that. And I've spent, as I say, over a  
3 year with him. And I think to his core, to his core, he  
4 regrets what he has done. And I say that in context -- I know  
5 the Court in sentencing Mrs. Toebbe -- and this is why I want  
6 to just briefly put this in here. I know this Court looks at  
7 every case separately. And every case is different, and every  
8 case has different facts.

9 I cited one specific case for the Court which I thought had  
10 facts sort of similar to this case. But one of the things that  
11 stuck out to me that was different about that case -- and I  
12 mentioned it in the thing -- is that that defendant who got a  
13 lower sentence than Mr. Toebbe is looking at here, that  
14 defendant had expressed, expressed to the agents that he was  
15 dealing with, a hatred for this country. By the way, a country  
16 that had taken him in. He was an immigrant. He expressed  
17 hatred for this country and expressed a desire to -- and  
18 expressed a plan to perhaps physically harm citizens within  
19 this country.

20 THE COURT: So what's the difference really between a  
21 hatred for the country and a disregard for the safety of the  
22 country?

23 MR. COMPTON: Well, I don't know that there is a  
24 difference, Your Honor. I think the two probably can go hand  
25 in hand, but I think there's a -- what we have here, the

1 difference I see here is I believe that at the time or during  
2 the period of time -- which this occurred over a period of  
3 time. At the period of time that this was taking place,  
4 Mr. Toebbe was experiencing a great deal of stress, a great  
5 deal of tumult in his life. We talked about the issues that he  
6 was having with his son.

7 Mr. Beck told the Court that Mrs. Toebbe at the time this  
8 was going on was at the apex of the psychological problems that  
9 she was dealing with. Mr. Toebbe was having stress issues at  
10 work related to his employment, what he was being asked to do  
11 at work, and then we add on top of this -- and this is not --  
12 I'm not trying to say that this is -- had -- is the be all end  
13 all or this has, you know, the major factor, but you add on top  
14 of all of that this business about, you know, the direction of  
15 the country and what was going on. You add all that together  
16 and Mr. Toebbe, who was a -- who has been a physicist, who was  
17 an active member of the United States military, honorably  
18 discharged, why would he -- where does this come from? Why  
19 does somebody all of a sudden decide, well, that's the reason  
20 why? Not because he hates the United States. Not because he  
21 wanted to see sailors dead. Not because this country was so  
22 repugnant to him that he wanted to do everything he can to put  
23 it down unlike Mr. Mascheroni in the case that I cited who had  
24 a hatred. A hatred for his employer. A hatred for the  
25 country.

1        Mr. Toebbe found himself in a situation where he -- I think  
2 he almost felt hopeless in terms of how to proceed. And I  
3 don't understand it. I don't know how to explain how somebody  
4 then goes from, you know, my life is, you know, in the ditch --  
5 how do I -- you know, what do I do, and then you go to start  
6 with the secrets. I don't understand it. I don't know that I  
7 can explain it to the Court. I don't know that Mr. Toebbe  
8 expects the Court to understand it. But he made a decision,  
9 and it was the worst decision of his life. It was the worst  
10 decision that he could have come up with. And to his core and  
11 for the rest of his life, he will regret taking that action.  
12 That doesn't mean that he hates this country. I don't think he  
13 does. I think he loves this country, and I think everything  
14 that he has done since the moment those agents approached him  
15 in Harpers Ferry to take him into custody, everything that he  
16 has done since then has been in an effort to atone for the  
17 absolute poor, poor decision-making that he's made over the  
18 last few years.

19        And I don't say -- again, I'm not -- he has offered I think  
20 a heartfelt and a thorough defendant's version statement to try  
21 to explain to the Court where he is. I don't -- I don't think  
22 he's trying to lay the blame for his decision-making at, you  
23 know, the feet of his kids or the feet of his wife. He knows  
24 what he did. He did it. Nobody was holding a gun to his head.  
25 He had access to the information. And whether Mrs. Toebbe was

1 driving the train or not, he was the one that had access to the  
2 information, and he was the one that could decide to take it or  
3 leave it. And he made a decision.

4 But we offer that and he offers that not as an excuse. Not  
5 as a, you know, get out of jail free. This is where his  
6 mindset was. This is where he was. This is why somebody with  
7 honorable military service and no criminal history all of a  
8 sudden decides to haul themselves to Harpers Ferry and  
9 Gettysburg for misconduct. I think the Court can see some of  
10 that in something that I thought, you know, is a little -- is a  
11 little unusual until you think about it for a little bit.

12 Mr. Toebe has no criminal history, no real serious, you  
13 know, physical health issues. Clearly, there were some -- you  
14 know, he was struggling with some -- I think some mental health  
15 issues at the time -- but substance abuse. And we're not  
16 talking about marijuana. We're not talking about crack. We're  
17 not talking about, you know, he wasn't -- he wasn't out on the  
18 street corner. What are we talking about? Something that we  
19 skip over a lot of the times in this courtroom. Not because  
20 it's not important. Just because we're dealing with more  
21 harder stuff than alcohol. And doesn't that -- doesn't that  
22 really express, you know, where he was in his mindset?

23 Mr. and Mrs. Toebe were suburbanites. You know, educated.  
24 You know, you come home from a long day of work, you have a  
25 glass of wine. Well, that's fine until, you know, you're

1 trying to, you know, deal with your child's very serious mental  
2 health issues. You're trying to deal with your wife's very  
3 serious mental health issues. You're trying to deal with the  
4 issues at work. And the one glass of wine turns into two  
5 glasses of wine, turns into three, turns into four, and all of  
6 a sudden, you're drinking a lot at home.

7 I think that also incapsulates where his mindset was.  
8 Where -- what was going on with him. And the fact that this  
9 was not some, you know, I hate this country. How can I get --  
10 how can I get back at this country? How can I do this? This  
11 was a mindset that he had found himself in. And sort of like  
12 what Mr. Beck was saying too -- and I think it's important.  
13 Yes, this was an offense motivated by money. Is that the  
14 definition of greed? Probably a generic definition, yes. But  
15 I think -- I agree with Mr. Beck that this was not greed in the  
16 sense that the Toebbes, you know, didn't like their house. It  
17 was -- they thought it was, you know, too plain or, you know,  
18 the mini or whatever it was that they were driving wasn't fancy  
19 enough. That they wanted something more showy or classy for  
20 the, you know, the private school set. That's not what we were  
21 talking about here. The decision had been made as to how to  
22 proceed and because that entailed going abroad that required  
23 money.

24 THE COURT: Like in the amount that they were  
25 seeking? Why didn't they just seek an amount, if that was the

1 case, that would pay off their debt and give them a little nest  
2 egg to start over?

3 MR. COMPTON: Well, I think --

4 THE COURT: That's where it drops into greed; right?

5 MR. COMPTON: Well, I think if the Court -- if the  
6 Court wants to -- if you want to look at their debt that's one  
7 thing. I don't know that -- I think they had some debt and so  
8 I don't know that that would necessarily be a lot. But also --  
9 and I think as the Court in questioning Mr. Douglas, for  
10 whatever reason -- I think probably because of security, you  
11 know, security issues, they were dealing -- Mr. Toebbe was  
12 dealing in cryptocurrency which, you know, one day is \$100,000  
13 and the next day it's \$50,000. So, you know, I'm not -- I  
14 don't know how secure that was.

15 The point though was -- I guess what I was trying to say  
16 inartfully was -- is that in perhaps a lot of those cases that  
17 have been cited, you know, we're not talking about \$100,000.  
18 We're talking about a million dollars, a hundred million  
19 dollars, or tens of millions of dollars. Because, again, the  
20 folks aren't looking to -- you know, we're not looking just to  
21 go to another country to get out of here or to leave our  
22 problems behind. We're looking to, you know, live the high  
23 life in some other country or to live the high life in Loudoun  
24 County or, you know, to do whatever we want to do to make -- to  
25 be powerful and wealthy. And I don't think that's the

1 situation that we have here.

2 The Court is well aware that Mr. Toebbe is highly educated.  
3 He's highly employable. So after the period of his  
4 incarceration, he is going to be, as he has been except for  
5 this period of time, a model citizen. Again, I've mentioned  
6 his military service to the Court. I had a note about  
7 disparity and deterrence, and I think the Court addressed those  
8 issues when sentencing Mr. -- Mrs. Toebbe, but just for the  
9 record here, Mr. Toebbe has no -- there -- has no Plan C or  
10 Plan D. He has no other information out there.

11 I think the Court correctly concluded in the previous  
12 sentencing that by the -- given the guideline range and the  
13 binding term, by the time that Mr. Toebbe would get out of  
14 jail, the, you know, universe of technology will have passed --  
15 any information that he had would pass them by. And the Court  
16 read it out loud, the statement from the vice admiral. Final  
17 resolution of the cases with no further risk to national  
18 security.

19 Mr. Toebbe is not going to be able to get a security  
20 clearance again. He's not going to be able to do this type of  
21 work again. Any institutional knowledge that he may retain in  
22 his mind and in his memory is going to be -- is -- I believe is  
23 outdated now based on the admiral's statement, but certainly in  
24 15 years, it's going to be worthless. And I can tell the  
25 Court, because Mr. Toebbe has told me and because I know that

1 the government has done an extensive amount of investigation  
2 into this case, again, based on -- because that's what they do  
3 and also based on Mr. Toebbe's post-offense rehabilitative  
4 conduct that there is nothing else that I believe that the  
5 Court needs to be worried about.

6 And so I believe that this Court can feel comfortable in  
7 sentencing Mr. Toebbe to the low end of the binding term, the  
8 low end of the guideline range, 188 months. I believe that  
9 takes into account and punishes him for the seriousness of his  
10 misconduct, but it takes into account those 3553(a) factors  
11 that we've presented to the Court both here and in our various  
12 memoranda. And most importantly, it takes into account that  
13 phenomenal post-offense rehabilitative conduct that I believe  
14 Mr. Toebbe wanted to do, needed to do, and was right in doing  
15 to begin to atone for what he's done.

16 THE COURT: Thank you, Mr. Compton.

17 Mr. Toebbe, you have the right to make a statement before  
18 you're sentenced. Do you desire to address the Court, sir?

19 DEFENDANT JONATHAN TOEBBE: Yes, Your Honor.

20 THE COURT: All right. Come on up to the podium.

21 DEFENDANT JONATHAN TOEBBE: Your Honor, 13 months in  
22 jail has afforded me a lot of time to think about what I have  
23 done, about the enormity of my crimes, and about the people  
24 that I have impacted. I failed in my responsibility to the  
25 American people to preserve the secrets that were entrusted



1 with me. I've let down my respected colleagues at the  
2 National Laboratories and at Naval Reactors. I failed my  
3 family. I brought shame to them and trauma to my children and  
4 to my wife.

5 I come before you deeply ashamed of what I have done. I  
6 won't reiterate everything that I said in my written statement  
7 in the presentence investigation out of respect for the medical  
8 privacy of my children and for my wife, but I do want in some  
9 way to explain my mindset as I carried out my crimes. Not to  
10 shirk responsibility but to provide you some insight into  
11 myself as a person. Hopefully to persuade you that I persuade  
12 -- I pose no risk of recidivism. And also I pray that other  
13 individuals in the government who may be at risk of becoming an  
14 insider threat will become aware of this testimony and will  
15 perhaps take heed and listen and recognize in themselves the  
16 danger signs of a mental breakdown and seek help before taking  
17 critical action before making the mistake that I did.

18 My family is everything to me. And the confluence of their  
19 mental health problems and the added stress at work of taking  
20 on my supervisor's responsibilities to free him up day to day  
21 to take on a special project on behalf of the admiral added  
22 tremendously to my workload and to my operational stress. The  
23 COVID pandemic and the difficulties of managing government  
24 remotely and appropriately handling classified information  
25 ironically enough added to the stress that I was under, and

1 I began self-medicating with alcohol. And it got out of  
2 hand.

3 And I believed that my family was in dire threat. That  
4 democracy itself was on the verge of collapse, and that sort of  
5 catastrophic thinking overwhelmed me, and I believed that I  
6 must take -- must have taken precipitous action to try to save  
7 them from grave harm. I recognize now that I was in the midst  
8 of a nervous breakdown over a period of perhaps 18 months and  
9 failed to recognize the warning signs. Failed to take  
10 advantage of the resources that were available to me through  
11 the Department of the Navy to help manage my operational  
12 stress.

13 I should have known better. I should have done better.  
14 And as a result, I endangered the men and women of the United  
15 States Navy whose uniform I was so proud to wear. I betrayed  
16 my colleagues at Naval Reactors and the National Laboratories  
17 serving honorably in a job that I was so proud to share with  
18 them. And I brought shame to my family. I have destroyed my  
19 children's lives.

20 I can't take back what I have done. I can't fix it. I  
21 can't put the toothpaste back in the tube. But by god, Your  
22 Honor, I've tried.

23 In addition to my post-arrest rehabilitation that  
24 Mr. Compton has referred to already, part of my interrogation  
25 and debriefing was with the FBI's Behavioral Analysis Unit, the

1 Mindhunters. Again, attempting to help them come up with a  
2 better profile for people like me in the hopes that they might  
3 be able to intervene sooner and prevent the next threat from  
4 happening. Not just for the protection of the country but to  
5 save that lost soul.

6 I am in anguish over what I have done, and I know I will  
7 never be able to make it right. In the ways that I am able, in  
8 the ERJ, I've tried to reach out to fellow inmates to tutor  
9 them in math. To help Mr. Taylor with his grammar. He has an  
10 ambition to open a small business himself one day and wanted to  
11 be able to speak properly when applying for a small business  
12 loan.

13 My ambition while incarcerated is to continue to use those  
14 skills and the blessings of my education to help other inmates  
15 complete theirs in the hopes that that will put them on a  
16 better path and reduce the risks that they will have to fall  
17 back into that cycle of poverty and crime that so many inmates  
18 face.

19 I beg Your Honor for lenience in sentencing to the bottom  
20 end of the guidelines. I know what I did is wrong. I need to  
21 be punished. But I beg you to give me the opportunity to be a  
22 solid citizen again one day, to be involved in my children's  
23 lives, to help them grow up and to take on the burdens of being  
24 the good young men that I know they are. And I also ask for  
25 the opportunity for my parents, my elderly parents, to live

1 long enough to see their prodigal son redeem himself in some  
2 way. I hope that they will live long enough to see me a free  
3 man once again. Thank you.

4 THE COURT: Thank you, sir.

5 Mr. Douglas.

6 MR. DOUGLAS: Your Honor, the government relies on  
7 its written filings to continue to recommend a sentence of 210  
8 months for this defendant. Specifically, the basis, if not the  
9 primary -- if not the sole basis, is the post-offense  
10 rehabilitative conduct which is most specifically and  
11 thoroughly described in the government's classified filings.  
12 Thank you, Your Honor.

13 THE COURT: Thank you, sir.

14 MR. COMPTON: Your Honor, I neglected to mention  
15 Mr. Toebbe would ask that the Court recommend that he be housed  
16 at the federal facility in Petersburg, Virginia, the Low.  
17 Petersburg offers programming which I think will benefit the  
18 defendant. I also think it will enable him to participate  
19 perhaps on the teaching side of that programming for some of  
20 the other inmates down there. Petersburg also offers I think  
21 protective custody levels that may benefit this defendant given  
22 the nature of the case.

23 And, lastly, Petersburg -- I think what the Court had heard  
24 from Mr. Beck, the oldest son will be on the Eastern Seaboard.  
25 His parents -- Mr. Toebbe's parents are in the Louisville area

1 and so it's sort of a centralized location.

2 THE COURT: Okay. So the federal facility in  
3 Petersburg.

4 MR. COMPTON: Specifically, the Low. I understand  
5 and Mr. Toebbe does that the Bureau of Prisons ultimately makes  
6 those decisions.

7 THE COURT: Will make the classification. Right.

8 MR. COMPTON: Yes, ma'am.

9 THE COURT: Okay. I'll make that recommendation.

10 All right, counsel, we're going to take a brief break, and  
11 then we'll get back out here on the record.

12 (Recess 2:55 P.M. - 3:30 P.M.)

13 THE COURT: Please be seated, everyone.

14 Anything further, counsel, before I impose sentence?

15 MR. DOUGLAS: Not by the government, Your Honor.

16 MR. COMPTON: Your Honor, I -- it just occurred to  
17 me, if the Court imposes a fine in this case -- just thinking  
18 as to the previous sentence -- we would ask that the Court  
19 impose a schedule of payments on that. I don't know what the  
20 defendant's ability is going to be to make payments while he's  
21 incarcerated. I understand -- I'm sure he'll be working at  
22 some point and making money. I know as the presentence report  
23 indicates that there are some financial arrangements that can  
24 be done. But to the extent that he may still owe some money  
25 when he gets out, I would hate for him to be set up for failure

1 immediately upon walking out. If we can make a schedule of  
2 payments for any fine in the amount of \$100 per month beginning  
3 the 5th of the month following his release.

4 THE COURT: All right. This is what I'll do in  
5 imposing a fine. I will order that the defendant pay \$100 a  
6 month beginning the 5th of each month beginning 6 months  
7 following his release from incarceration, and I'll change, with  
8 regard to Ms. Toebbe's fine as well, the schedule of payments  
9 so we don't set anybody up for failure here.

10 MR. COMPTON: Thank you, Your Honor.

11 THE COURT: Okay. Will the defendant please stand.

12 Pursuant to the Sentencing Reform Act of 1984, it's the  
13 judgment of the Court that the defendant, Jonathan Toebbe, is  
14 hereby committed to the custody of the Bureau of Prisons to be  
15 imprisoned for a term of 232 months. This sentence of  
16 imprisonment is at the higher end of the advisory guideline  
17 range and the higher end of the binding term of imprisonment  
18 contained in the plea agreement. You may have a seat,  
19 gentlemen.

20 I make the following recommendations to the Bureau of  
21 Prisons: That the defendant be incarcerated at the federal  
22 facility in Petersburg, the Low; that the defendant be allowed  
23 to participate in substance abuse treatment, including the  
24 500-Hour Residential Drug Abuse Treatment Program as determined  
25 by the Bureau of Prisons; and that he be given credit for time

1 served since October 9, 2021.

2       Upon release from imprisonment, Mr. Toebe, you shall be  
3 placed on supervised release for a term of five years. While  
4 on supervised release, you must comply with the following  
5 mandatory conditions: You must not commit another federal,  
6 state, or local crime. You must not unlawfully possess a  
7 controlled substance. You must refrain from any unlawful use  
8 of a controlled substance. You must submit to one drug test  
9 within 15 days of release from imprisonment and at least two  
10 periodic drug tests thereafter as determined by the Court. And  
11 you must cooperate in the collection of DNA as directed by the  
12 probation officer.

13       You must also comply with the standard conditions that have  
14 been adopted by this Court in its November 29, 2016, standing  
15 order as well as the following special conditions: You must  
16 submit to substance abuse testing to determine if you used a  
17 prohibited substance and must not attempt to obstruct or tamper  
18 with the testing methods. This condition assists the probation  
19 officer in identifying treatment needs, providing rehab  
20 services, reducing the risk of recidivism, and provides for  
21 protection of the community.

22       You must not use or possess any controlled substances  
23 without a valid prescription. If you do have a valid  
24 prescription, you must disclose the prescription information to  
25 your probation officer and follow the instructions on the

1 prescription. This condition assists probation in reducing the  
2 risk of recidivism and provides for protection of the  
3 community.

4 You must provide the probation officer with access to any  
5 requested financial information and authorize the release of  
6 financial information. The probation officer may share that  
7 financial information with the U.S. Attorney's Office. This  
8 condition assists the probation officer in legitimizing  
9 defendant's employment and/or income, provides protection for  
10 the community, and aids in the maximum collection of financial  
11 penalties.

12 You must not engage in -- well, let's put it this way. We  
13 reworded that section as far as the employment. You're  
14 required to advise your probation officer of any new  
15 occupation, business, profession, or volunteer activity before  
16 you start, and the probation office must approve employment  
17 unless that occupation, business, profession, or volunteer  
18 activity requires or enables Mr. Toebbe to have access to  
19 classified government information.

20 Unless excused for legitimate reasons, if not in compliance  
21 with the condition of supervision requiring full-time  
22 employment at a lawful occupation, you may be required to  
23 perform up to 20 hours of community service per week until  
24 employed as approved or directed by your probation officer.  
25 This condition assists probation in reducing the risk of



1 recidivism and provides for protection of the community.

2 It's further ordered the defendant shall pay the United  
3 States a special assessment fee in the amount of \$100.

4 And, Chad, was that paid or not?

5 THE CLERK: It was paid, yes.

6 THE COURT: It was paid. I'll note it has been paid  
7 in full.

8 It's further ordered the defendant pay a fine in the amount  
9 of \$45,700. I take that amount into consideration because  
10 that's the amount that -- of the money, the earnest money that  
11 was not recovered. I don't find that the defendant or his wife  
12 should profit because of a loophole in the guidelines or the  
13 sentencing parameters in this case.

14 Additionally, defendant has agreed to forfeit to the United  
15 States all right, title, and interest in the following items  
16 that the defendant agrees constitute money, property, and/or  
17 assets derived from or obtained by the defendant as a result of  
18 his illegal activities: All papers, digital media, and  
19 electronic devices seized from his residence, his vehicles, and  
20 his Naval Reactors offices in October 2021.

21 In reaching my decision as to the proper sentence to be  
22 imposed, I did consider all those factors set forth in  
23 18 U.S.C. § 3553(a). Specifically, the reasons for the  
24 sentence imposed here today are as follows: The defendant  
25 before this Court turned 44 years old today. He is a son, a

1 husband, and a father. He has no prior criminal record. By  
2 all counts, he was raised by successful and supportive parents,  
3 who served as role models, who financially supported him  
4 through his various educational endeavors, and who encouraged  
5 him to set and achieve his goals.

6 His personal history and list of accomplishments reads of  
7 one that many strive for but few achieve. He holds multiple  
8 college and advanced degrees. He was an educator. He served  
9 in the U.S. Navy, and he entered an elite career field that  
10 someone can only achieve through hard work, dedication, and  
11 trust.

12 The Court has reviewed the circumstances of the instant  
13 offense. It's very clear that defendant's actions were  
14 calculated and required advance planning over several years to  
15 avoid possible detection. In a manner that reads like a crime  
16 novel or a movie script, the defendant abused his position of  
17 trust and his skill as a nuclear engineer in the Naval Nuclear  
18 Propulsion Program to threaten national security. The  
19 defendant's actions and greedy self-serving intentions placed  
20 military service members at sea and every citizen of this  
21 country in a vulnerable position and at risk of harm from  
22 adversaries.

23 In his own words, the defendant's family, and I quote, "has  
24 always been of primary importance," end of quote, in his life.  
25 In seemingly searching for a palatable excuse for his actions,

1 the defendant suggests that he was devoted to protecting his  
2 family so he made the decision to steal restricted data to help  
3 them escape, quote, "the collapse of American democracy," end  
4 of quote. Those are his words. He minimizes his actions,  
5 placing the protected information he stole into categories of  
6 "what," and then he opted not to steal the "hows" and the  
7 "whys." He justified his actions by stating he was trying to  
8 limit the damage to the U.S., a country he was proud to serve  
9 and swore an oath to protect.

10 The defendant was keenly aware of the consequences that he  
11 could face by his misconduct. He acknowledged to his wife in  
12 communications that another country may not honor the skills  
13 that he has to offer. When the defendant took an oath, he was  
14 made aware of the legal consequences of violating the terms of  
15 his employment with the United States. The defendant comes  
16 face to face with these consequences today.

17 The unintended consequences of the defendant's activity  
18 unfortunately are equally significant. First, his children  
19 lost critical time with their father while he was planning and  
20 acting on his crime. This was a time he could have spent  
21 focusing on their immediate needs.

22 Secondly, the defendant will serve a term of imprisonment  
23 that will not be present -- and will not be present to protect  
24 and guide his children as a father should when they face life's  
25 challenges.

1 Third, the defendant may have already spent his last time  
2 with his parents prior to his incarceration which is a scenario  
3 that he created for his own mother and father.

4 Lastly, the United States, defendant's mentees and former  
5 coworkers and friends can no longer trust the defendant. The  
6 cumulative impact of the defendant's crime remains to be seen.

7 Based on defendant's involvement in the instant offense,  
8 his personal history and characteristics, and his lack of  
9 criminal history, the sentence imposed here today is warranted.  
10 It's sufficient but not greater than necessary. The sentence  
11 incorporates the binding term agreed on by the parties in the  
12 plea agreement, reflects the serious nature of the offense, and  
13 takes into consideration the risk to national security, the  
14 position of the Navy, but most importantly, the risk to  
15 national security created because of the defendant's own  
16 actions. This sentence will also provide defendant with an  
17 opportunity to address his substance abuse issues and explore  
18 long-term career options.

19 In a recent -- speaking of the position of the Navy, in a  
20 recent supplemental victims impact statement, Admiral Houston  
21 reported to the Court that the Navy agreed to both of the plea  
22 agreements in this case, and I gave that weight in determining  
23 whether to accept this plea and how to sentence the defendant.  
24 I also gave weight to what the vice admiral went on to say. He  
25 went on to say, "Not only that the plea agreement further

1 accomplished final resolution of the case with no further risks  
2 to the national security," but he also said, "As explained in  
3 Reference A" -- meaning the original victim's impact statement  
4 -- "the betrayal by the Toebbes has had far-reaching  
5 consequences for the United States and the sailors and families  
6 who serve the United States Navy."

7 Also, I compared the defendant's worst case scenario  
8 exposure if he was convicted of all three counts in this  
9 indictment at trial under the guidelines which would require me  
10 to group those three counts for calculation purposes and also  
11 to, most importantly, consider without exceptional  
12 circumstances, have those counts run concurrently.

13 Worst case scenario if this defendant went to trial, the  
14 range of imprisonment under the advisory guidelines would be  
15 262 to 327 months. That's 21 1/2 years to 27 1/4 years based  
16 on my math. With acceptance of this binding plea, which the  
17 Navy supported, the guidelines recommended, as I stated at the  
18 beginning during my calculation, 188 to 235 months. That's  
19 15.6 to 19.5 years.

20 I also had further considerations in support of the  
21 sentence imposed, and they're as follows: I considered the  
22 intangibles and nuances of trying this case and the fact, as we  
23 all know, that going to trial doesn't guarantee a conviction of  
24 any or all counts. I considered the trial costs associated  
25 with trial, the potential for leaks that could further harm

1 this country's security during the course of trial, the length  
2 of sentences imposed in other cases but also the specifics of  
3 those cases, which are all different than that case that's  
4 before me. I considered the time and distance that this  
5 sentence places between the defendant now and the defendant  
6 when he's finally released from incarceration in the light that  
7 hopefully technology and military advances will have advanced  
8 to the point where any information he may have retained for  
9 redistribution will be stale or worthless.

10 I also considered the defendant's role in the cover story  
11 that was concocted before he was arrested in this case, but I  
12 also considered some other mitigating factors. I considered  
13 his post-offense rehabilitative conduct which the government  
14 agreed with the defendant about. I considered in contrast to  
15 Mrs. Toebbe that this defendant made productive use of his time  
16 in the jail. Not only with the rehabilitative conduct but also  
17 even helping to improve those of lesser station, who would be  
18 considered of lesser station considering the charges that  
19 Mr. Taylor is facing in the jail.

20 Nonetheless, even though Mr. Toebbe and Mr. Taylor's worlds  
21 collided there in the jail, Mr. Toebbe acknowledged that  
22 Mr. Taylor was an individual just as himself, he was a human  
23 being, and put Mr. Taylor's charges and alleged conduct aside  
24 and helped him with his GED studies. I think Mr. Compton  
25 mentioned he helped him with his math. Mr. Toebbe indicated he

1 was helping others to improve upon their education in the jail  
2 as well. In fact, he even helped Mr. Taylor, according to what  
3 Mr. Taylor reports to the Court, learn how to play chess which  
4 is not easy, but that gave him something else to focus on to  
5 help him productively pass his time. So Mr. Toebbe deserves  
6 some credit for productive use of his time in jail.

7 Also in contrast to Mrs. Toebbe, both in writing in the  
8 statement from the defendant in the PSR as well as his  
9 presentation here in court, I found that his remorse that he  
10 expressed to the Court was genuine. I think he was -- is truly  
11 ashamed and sorry for his actions, and I took that into account  
12 as well.

13 Overall, this sentence of imprisonment meets the sentencing  
14 objectives of punishment, general deterrence, incapacitation,  
15 and rehabilitation, and it will promote respect for the law.  
16 This sentence also reflects a commitment to protect our  
17 nation's security as a whole and to serve as a warning to  
18 those who are entrusted with valuable government secrets that  
19 if you break the law and you're caught, you can and will be  
20 punished.

21 A term of supervised release is required. In this case, a  
22 five-year term of supervised release was imposed and that will  
23 allow the probation office to monitor defendant's conduct in  
24 the community and will assist him in leading a law-abiding  
25 lifestyle when he is released from incarceration. This term of

1 supervised release will also assist the probation office with  
2 monitoring the defendant's financial resources, his substance  
3 abuse tendencies, and will provide the defendant with  
4 additional guidance, support, and resources for obtaining  
5 gainful employment to meet his family responsibilities.

6 I'll grant the motion of the government and dismiss the  
7 remaining counts of the indictment which are two and three,  
8 Mr. Douglas?

9 MR. DOUGLAS: So moved, Your Honor.

10 THE COURT: Granted. And I ask probation to prepare  
11 the judgment and commitment order.

12 Mr. Toebbe, although a defendant who has pled guilty has  
13 the right to appeal from the judgment of this Court, a  
14 defendant who has pled guilty may waive that right as part of a  
15 plea agreement. You entered into a plea agreement which waived  
16 in whole or in part your right to appeal your sentence. Those  
17 types of sentences are generally enforceable, and it appears as  
18 though it's enforceable in your case. However, if you believe  
19 the waiver in your plea agreement is unenforceable for some  
20 reason, or you believe your guilty plea was somehow unlawful or  
21 involuntary, or you believe there's some other defect in these  
22 proceedings you didn't waive by your guilty plea, you can  
23 present that theory to the appellate court.

24 However, if you decide to appeal, you must file a notice of  
25 appeal with the clerk of this court within 14 days following



1 entry of the judgment and commitment order. If you request,  
2 the clerk of court will enter a notice of appeal for you. And  
3 if you desire counsel on appeal, and you can't afford a lawyer,  
4 the appropriate court will review your financial affidavit to  
5 determine your eligibility for court-appointed counsel.

6 Anything further on behalf of the government, Mr. Douglas?

7 MR. DOUGLAS: No, Your Honor.

8 THE COURT: Anything further on behalf of your  
9 client, Mr. Compton?

10 MR. COMPTON: No, Your Honor. Thank you.

11 THE COURT: All right. Both defendants are remanded  
12 to custody.

13 MR. DEHAVEN: Your Honor --

14 THE COURT: Yes, sir.

15 MR. DEHAVEN: -- the Court did not mention anything  
16 about potential waiver of the interest requirement on the fine  
17 for either defendant.

18 THE COURT: Oh, I'm sorry. I'm going to waive the  
19 interest requirement on those fines in both cases. I think  
20 that the fine is sufficient enough, and I don't find with the  
21 size of that fine that the defendants are going to have the  
22 resources to also pile on, for the amount of time they're  
23 serving incarcerated, interest on those.

24 Thank you, Mr. DeHaven, for catching that. Anything  
25 further from anyone?

1 MR. DOUGLAS: No, Your Honor.

2 THE COURT: All right. Defendants are remanded.

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4 (Hearing concluded at 3:55 P.M.)

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CERTIFICATE

I, Kate A. Slayden, Registered Professional Reporter and Official Court Reporter of the United States District Court for the Northern District of West Virginia, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the above-styled action on November 9, 2022, as reported by me.

I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Given under my hand this 12th day of January 2023.

/s/Kate A. Slayden

Kate A. Slayden, RPR  
Official Reporter, United States  
District Court for the Northern  
District of West Virginia